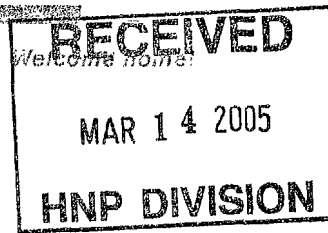


RA14

March 13, 2006

Felix Reliford, Senior Planner  
City of Milpitas  
455 East Calaveras Blvd.  
Milpitas, CA 95035



Dear Felix,

The purpose of this correspondence is to address certain considerations for Redevelopment Agency and CDBG funding of our Milpitas Senior Group Residence Project. I will also describe how these funds will be used within the context of the entire Milpitas Senior Group Residence Project.

**SITE:**

751 Vasona ST  
Milpitas, CA 95035  
APN: 022-06-025

Escrow to close July 1, 2006  
Escrow account at Financial Title Co  
Escrow Officer: Maria Salcedo  
408-263-2555  
Escrow Account # 41166453-285-MSA

**Purchase Contract, Title Report, Appraisal, Termite Inspection and Property Inspection enclosed.**

**PROJECT DESCRIPTION:**

The Milpitas Senior Group Residence Project will develop 5-SRO units in congregate living in a 5-bedroom 3-bath single-family home at 751 Vasona St. The house was built in 1960 and is located in a residential neighborhood known as the Curtner Estates. Each resident will be 60 years of age or older and functioning independently. Each tenant will hold a separate and individual lease with Senior Housing Solutions. Each resident will have their own numbered unit which will be reflected in the lease. Common areas of the single-family home including living room, kitchen, bathrooms, garage and common grounds will be shared by the residents.

Senior Housing Solutions will do extensive remodel based on inspection findings and remodel design features necessary to accomplish program goals. The goal of the Milpitas Senior Group Residence Project is to develop safe, affordable housing and program



strategies that create opportunities to enhance the abilities of the residents to live healthy, high quality lives. The cost of the rehabilitation and remodel is estimated at \$199,525. **A detailed project schedule and list of similar projects that we have completed are attached.**

The result of the Milpitas Senior Group Residence Project will be 5 units of affordable housing for independently functioning seniors whose income is below 50% of the area median with rents held to 30% of the individual resident's income. Architectural design strategies described in Christopher Alexander's "A Pattern Language" will reinforce casual connections between residents. Combining housing, property management and support services this project will create positive health and quality of life outcomes for seniors. **An agency brochure attached.**

The success of the Milpitas Senior Group Residence Project will be determined by measuring actual performance against the following project objectives:

1. Develop 5 units of affordable housing for extremely low-income seniors and keep rent levels at 30% of their income
2. 75% of residents will report that they feel better about their lives since they moved into the house
3. 75% of residents will report that they have someone in the house to talk to if something is bothering them
4. 75% of residents will report that their physical health is fair or better
5. 75% will report they have maintained or increased their physical activity since living in the house
6. 95% of residents will report they feel safe in the home

#### **FINANCING:**

**An updated Sources and Uses as well as commitment letters from sources with the exception of Milpitas Redevelopment and CDBG are attached.**

Our target population will be senior 60+ years whose income is less than \$1,200 a month. We currently have 36 of 37 units (in eight single-family homes) filled and the average monthly income of current residents is \$971. We keep rent levels to 30% of income. Current average rent is \$291 per month and this includes phone, cable and utilities.

#### ***Milpitas Redevelopment Agency and CDBG Funds Will be in the form of Grants***

The City of Milpitas will be in the form of Grants. Traditionally CDBG, HOME and Redevelopment contracts and regulatory agreements identify the units as "SRO congregate living units in a single-family home". Grant vehicles have committed us to specific affordability periods along with thresholds related to commitment of funds granted, term of the construction and certificate of completion. Deferred and residual receipt loans go a long way to support the long-term operations of the project but they have an extremely negative impact when reporting our net assets in our audited financial statements. Deferred loans require us to book the deferred interest as an expense. Each year, because we have to book this interest expense there is a negative impact on our net

assets because our projects do not produce the income to offset this interest expense. Grants on the other hand support our ongoing operations without the negative impact on our booked net assets. Grants help our financial statements portray us more fairly. And residual receipts always are returned to help operate the project. Since beginning the Senior Group Residence program over 20 years ago we have never had to close a house for lack of operating support. But, because we target seniors whose income is just \$1,200 or less a month, keep rents to 30% of income and provide support services along with our housing, we need to raise about \$100,000 a year for operations through foundation, corporate and individual donations. And, with the grant and deferred loans from our jurisdictional collaborators for the capital activities, we are more successful in making our case for donations from the sources that support our ongoing operations.

#### ***A Developer Fee Will Be Collected***

The developer fee supports our costs of doing business. In addition, since the advent of the tax credit program developer fees for nonprofit developers have become standard. The standard for tax credit projects is 10 to 12 percent. However on very large projects of \$10 million or more the fee is generally flat at \$1million. Other considerations are the amount of risk for the developer. Specifically for our type of projects, in addition to helping with cash flow, equity and fund balance, we view it as an investment in our sustainability. Key is investment in the population we serve and the rents levels we have committed to. The developer fee we are charging for the project is 5 percent of the total estimated cost of the project. The fee is taken as a grant during the escrow process, as equity at the time a purchase through the escrow process or as a percent of the total rehabilitation completed during the construction phase depending on the desire of the jurisdiction or lending source.

#### ***Acquisition Funds & Uses***

The plan is to have the \$250,000 Milpitas Redevelopment, \$150,000 LCD Temporary Loan (to be taken out by \$150,000 Milpitas CDBG), \$91,196 LCD Temporary Loan (to be taken out by \$91,196 Urban County CDBG), \$250,000 Santa Clara OAH and \$70,499 Housing Trust cover costs related to acquisition and related costs including inspections, escrow and title fees, insurance, loan and interest fees and developer fees which will total \$811,695. These funds will pass through the escrow account and will be recorded on by the title company in the buyer/borrower closing statement. When the Milpitas CDBG and Urban County CDBG contracts are executed by their respective jurisdictions a check from that jurisdiction will be drafted payable to LCD for the amount of the loan.

#### ***Rehab Funds & Uses***

The rehabilitation/ remodel will be funded by \$68,255 County Rehabilitation Program, \$29,501 from the Housing Trust and \$108,069 from the GAP source (a request will be made to the City of Milpitas Redevelopment Agency during the week of March 20) and \$11,225 from Senior Housing Solutions. The total cost of rehabilitation for the project is \$217,050 including architect, demolition and construction, equipment, communications and cable, program supplies, furnishings and utilities. The jurisdictions may hold the funds and pay them directly to the contractor per invoicing or may award the funds to Senior Housing Solutions and we will manage the payment of the contractor. We have

experience with both processes. In either case the invoicing and payment records will be copy and made available. A certificate of completion will be provided to all funding sources.

***Lien Position of Loans***

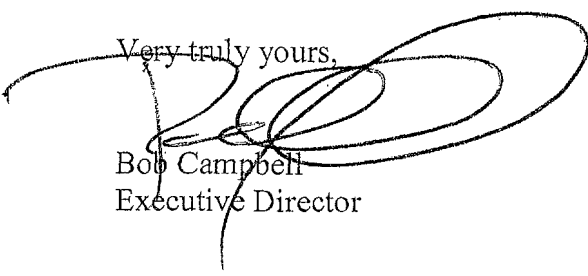
Lien position will be based on amount of loans provided. Milpitas Redevelopment and CDBG would be excluded from the lien position because funds are being provided as grants instead of loans. However Milpitas interest in the property is covered by the affordability period that will be identified in the contracts. Based on the attached proforma lien position for entities providing loans would be:

- 1<sup>st</sup> LCD for Temporary Loan
- 2<sup>nd</sup> County Office of Affordable Housing
- 3<sup>rd</sup> Housing Trust of Santa Clara County
- 4<sup>th</sup> Urban County
- 5<sup>th</sup> County Rental Rehab Program

Once the LCD temporary loan was paid off each entity would move up in the loan positions.

Thanks to you and the City for support of this project. I hope I have described the project clearly and provided the necessary information to move forward with drafting agreements and contracts necessary to close escrow on July 1. Please let me know if further information is needed or if I can provide more clarity on the information provided.

Very truly yours,



Bob Campbell  
Executive Director

**RESOLUTION NO. \_\_\_\_\_**

**RESOLUTION OF THE REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS ADOPTING FINDINGS PURSUANT TO CALIFORNIA COMMUNITY REDEVELOPMENT LAW SECTION 33334.2(g)(1) FOR THE USE OF SET-ASIDE HOUSING FUNDS OUTSIDE OF THE REDEVELOPMENT PROJECT AREA, APPROVING A GRANT AND DEVELOPMENT AGREEMENT WITH SENIOR HOUSING SOLUTIONS TO ASSIST IN THE ACQUISITION OF AN AFFORDABLE HOUSING PROJECT, AND ADOPTING FINDINGS AND AUTHORIZING EXECUTION OF DOCUMENTS IN CONNECTION WITH SUCH GRANT**

WHEREAS, by Resolution No. 192 adopted in 1976, the Redevelopment Agency of the City of Milpitas ("Agency") established the Milpitas Redevelopment Project Area No. 1 ("Project Area") and adopted a redevelopment plan for the Project Area (as thereafter amended, the "Redevelopment Plan"); and

WHEREAS, the City of Milpitas ("City") is facing an affordable housing crisis that impacts low-income residents and their ability to find affordable housing; and

WHEREAS, the Agency and City staff have reviewed several sites inside and outside of the Milpitas Redevelopment Project Area in seeking to increase the production of affordable housing units; and

WHEREAS, the Housing Element of the General Plan for the City has been certified by the Department of Housing and Community Development and identifies a Regional Housing Needs Allocation of 4,348 dwelling units for the City, of which 2,195 dwelling units are needed for very low, low and moderate-income households; and

WHEREAS, the Agency has provided funding to financially support 1,116 affordable housing units; and

WHEREAS, additional affordable housing units are still needed to meet the needs of City residents and employees; and

WHEREAS, Senior Housing Solutions, a California public benefit corporation ("Senior Housing Solutions") proposes to acquire and rehabilitate a single-family residence outside of the Project Area at 751 Vasona St. in the City of Milpitas to accommodate five (5) extremely low-income seniors (the "Project"); and

WHEREAS, on April 18, 2006 the City approved the allocation of Community Development Block Grant ("CDBG") Funds in the amount of \$150,000 to assist with acquisition and rehabilitation of the Project ("CDBG Grant"); and

WHEREAS, on November 15, 2005 the Agency approved a grant in the amount of \$250,000 to be funded from the Agency's Low and Moderate-Income Housing Fund established pursuant to Health and Safety Code Section 33334.2 ("Set-Aside Funds"), to assist with acquisition and rehabilitation of the Project ("Agency Grant"); and

WHEREAS, Health and Safety Code Section 33334.2(g)(1) permits expenditure of Set-Aside Funds outside the Project Area upon adoption by the City Council and the Agency of a finding that the use of the Set-Aside Funds will be of benefit to the Project Area; and

WHEREAS, the Project and the terms and conditions for the provision of the CDBG Grant and the Agency Grant (collectively the "Grant") are more particularly described in a Grant and Development Agreement (the "Grant Agreement"), a copy of which has been provided to the Agency; and

WHEREAS, the City Council has determined that the Project is exempt from the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15301 because the Project involves the acquisition of an existing structure to provide affordable housing to low-income households; and

WHEREAS, pursuant to the Grant Agreement Senior Housing Solutions and Agency will enter into an Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants ("Regulatory Agreement") which will restrict Project rents at levels affordable to extremely low-income senior households for a period of ninety-nine (99) years, and Senior Housing Solutions will execute a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (the "Deed of Trust") pursuant to which the Agency will be provided a security interest in the Project to secure compliance with the affordability and other requirements of the Regulatory Agreement; and

WHEREAS, Senior Housing Solutions and Agency staff have determined that it will not be economically feasible to operate the Project at the proposed level of income-targeting and affordability without financial assistance from the Agency, and despite good faith efforts on the part of Senior Housing Solutions, no other reasonable means of private or commercial financing is reasonably available to finance the Project at such affordability and income levels.

NOW, THEREFORE, BE IT RESOLVED THAT THE REDEVELOPMENT AGENCY of the City of Milpitas does hereby:

1. Find that the provision of the Agency Grant to the Project in accordance with the Grant and Development Agreement will increase the availability of affordable housing in the City which will be of benefit to the Project Area, will further the goals of the Redevelopment Plan, and will be consistent with the implementation plan adopted in connection therewith.
2. Find that (i) the provision of financial assistance in the amount of the Agency Grant is necessary to make the Project financially feasible and affordable to extremely low-income households, (ii) it would not be economically feasible to operate the Project at the proposed level of income-targeting and affordability without such financial assistance, and (iii) despite good faith efforts on the part of Senior Housing Solutions, no other reasonable means of private or commercial financing is reasonably available to finance the Project at such affordability and income levels.
3. Approve the Grant Agreement, Deed of Trust and the Regulatory Agreement, and authorizes the Executive Director or his or her designee to execute each such document to which the Agency is a party substantially in the form on file with the Agency Secretary.
4. Authorize the Executive Director to execute and deliver such other instruments and to take such other actions as necessary to carry out the intent of this Resolution.

PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2006, at a meeting of the Redevelopment Agency of the City of Milpitas by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

---

Mary Lavelle, Agency Secretary

---

Jose S. Esteves, Chairperson

APPROVED AS TO FORM:

---

Steven T. Mattas, Agency Counsel

**RESOLUTION NO. \_\_\_\_\_**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS  
ADOPTING FINDINGS PURSUANT TO CALIFORNIA COMMUNITY  
REDEVELOPMENT LAW SECTION 33334.2(g)(1) FOR THE USE OF SET-ASIDE  
HOUSING FUNDS OUTSIDE OF THE REDEVELOPMENT PROJECT AREA**

WHEREAS, the City of Milpitas ("City") is facing an affordable housing crisis that impacts low-income residents and their ability to find affordable housing; and

WHEREAS, the Redevelopment Agency of the City of Milpitas ("Agency") and City staff have reviewed several sites inside and outside of the Milpitas Redevelopment Project Area ("Project Area") in seeking to increase the production of affordable housing units; and

WHEREAS, the Housing Element of the General Plan for the City has been certified by the Department of Housing and Community Development and identifies a Regional Housing Needs Allocation of 4,348 dwelling units for the City, of which 2,195 dwelling units are needed for very low, low and moderate-income households; and

WHEREAS, the Agency has provided funding to financially support 1,116 affordable housing units; and

WHEREAS, additional affordable housing units are still needed to meet the needs of City residents and employees; and

WHEREAS, Senior Housing Solutions, a California public benefit corporation ("Senior Housing Solutions") proposes to acquire and rehabilitate a single-family residence outside of the Project Area at 751 Vasona St. in the City of Milpitas to accommodate five (5) extremely low-income seniors (the "Project"); and

WHEREAS, on April 18, 2006 the City approved the allocation of Community Development Block Grant ("CDBG") Funds in the amount of \$150,000 to assist with acquisition and rehabilitation of the Project ("CDBG Grant"); and

WHEREAS, on November 15, 2005 the Agency approved a grant in the amount of \$250,000 to be funded from the Agency's Low and Moderate-Income Housing Fund established pursuant to Health and Safety Code Section 33334.2, ("Set-Aside Funds") to assist with acquisition and rehabilitation of the Project ("Agency Grant"); and

WHEREAS, Health and Safety Code Section 33334.2(g)(1) permits expenditure of Set-Aside Funds outside the Project Area upon adoption by the City Council and the Agency of a finding that the use of the Set-Aside Funds will be of benefit to the Project Area; and

WHEREAS, the Project and the terms and conditions for the provision of the CDBG Grant and the Agency Grant (collectively the "Grant") are more particularly described in a Grant and Development Agreement (the "Grant Agreement"), a copy of which has been provided to the City Council; and

WHEREAS, pursuant to the Grant Agreement Senior Housing Solutions and Agency will enter into an Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants ("Regulatory Agreement") which will restrict Project rents at levels affordable to extremely low-income senior households for a period of ninety-nine (99) years, and Senior Housing Solutions will execute a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (the "Deed of Trust") pursuant to which the Agency will be provided a security interest in the Project to secure compliance with the affordability and other requirements of the Regulatory Agreement; and



WHEREAS, Senior Housing Solutions and City staff have determined that it will not be economically feasible to operate the Project at the proposed level of income-targeting and affordability without financial assistance from the Agency, and despite good faith efforts on the part of Senior Housing Solutions, no other reasonable means of private or commercial financing is reasonably available to finance the Project at such affordability and income levels.

NOW, THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF MILPITAS HEREBY:

1. Finds that the expenditure of Set Aside Funds in accordance with the Grant and Development Agreement will increase the availability of affordable housing in the City which will be of benefit to the Project Area, will further the goals of the Redevelopment Plan, and will be consistent with the implementation plan adopted in connection therewith.
2. Finds that the Project is exempt from the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15301 because the Project involves the acquisition of an existing structure to provide affordable housing to low-income households.
3. Authorizes the City Manager to take such actions as necessary to carry out the intent of this Resolution.

PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2006, at a meeting of the City Council of the City of Milpitas by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Steven T. Mattas, City Attorney

Recording requested by and when  
recorded mail to:  
Redevelopment Agency of the City of Milpitas  
455 East Calaveras  
Milpitas, CA 95035  
Attention: Executive Director

EXEMPT FROM RECORDING FEES PER  
GOVERNMENT CODE §§ 6103, 27383

Space above this line for Recorder's use.

**AFFORDABLE HOUSING REGULATORY AGREEMENT**

**AND**

**DECLARATION OF RESTRICTIVE COVENANTS**

**by and between**

**REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS**

**and**

**SENIOR HOUSING SOLUTIONS**

This Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants (this "**Agreement**") is entered into effective as of \_\_\_\_\_, 20\_\_ ("**Effective Date**") by and between the Redevelopment Agency of the City of Milpitas, a public body, corporate and politic (the "**Agency**") and Senior Housing Solutions, a California public benefit corporation ("**Owner**"). Agency and Owner are hereinafter collectively referred to as the "**Parties**."

#### RECITALS

A. Owner has purchased or shall purchase the real property located on 751 Vasona Street in the City of Milpitas, California and more particularly described in Exhibit A attached hereto (the "**Property**").

B. Owner intends to rehabilitate, own and operate on the Property a single family home that will provide five (5) single occupancy affordable housing units to five (5) extremely low-income seniors ("**Project**") in accordance with that certain Grant and Development Agreement ("**Grant Agreement**") dated as of June, \_\_\_\_ 2006, executed by and between Owner and Agency.

C. The Grant Agreement provides that the Project shall be affordable to and occupied by or available for occupancy by extremely low-income seniors for a period of not less than 99 years.

D. The City Council of the City of Milpitas ("**City**") has agreed to provide Owner a grant in the amount of \$150,000 from the City's Community Development Block Grant ("**CDBG**") Fund to financially assist with the project ("**CDBG Grant**").

E. Pursuant to the Grant Agreement, Agency has agreed to provide to Owner a grant in the amount of \$250,000 (the "**Agency Grant**") in order to provide partial financing for the acquisition of the Project. The Grant is secured by a Specific Performance Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing ("**Deed of Trust**"), dated as of \_\_\_\_\_, 2006 and executed by Owner for the benefit of Agency. The Deed of Trust shall be recorded concurrently herewith. The Agency Grant and the CDBG Grant are collectively referred to as "**Grant**" herein.

F. As a condition to its agreement to provide the Grant to Owner, Agency requires the Property to be subject to the conditions, restrictions, reservations and rights of the Agency set forth herein.

G. The Parties have agreed to enter into and record this Agreement in order to satisfy the conditions described in the foregoing Recitals. The purpose of this Agreement is to regulate and restrict the occupancy and rents of the Project's Restricted Units for the benefit of the Project occupants. The covenants in this Agreement are intended to run with the land and be binding on Owner and Owner's successors and assigns for the full term of this Agreement.

**NOW THEREFORE**, in consideration of the foregoing, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Definitions. The following terms have the meanings set forth in this Section wherever used in this Agreement or the attached exhibits.

**"Area Median Income" or "AMI"** means the area median income for Santa Clara County, California, adjusted for household size, determined periodically by the California Department of Housing and Community Development ("HCD") as published in Section 6932 of Title 25 of the California Code of Regulations ("**Regulations**") or successor provision published pursuant to California Health and Safety Code Section 50093(c). If HCD ceases to make such determination, Area Median Income shall be the median income applicable to Santa Clara County, with adjustments for household size, as determined from time to time by the U.S. Department of Housing and Urban Development ("**HUD**") pursuant to the United States Housing Act of 1937 as amended, or such other method of median income calculation applicable to the City of Milpitas that HUD may hereafter adopt in connection with such Act.

**"Eligible Tenant"** means a tenant for which total income upon initial occupancy does not exceed the maximum income level for a Restricted Unit as specified in Subsection 2.2, and that meets the requirements set forth in Section 2.1.

**"Extremely Low-Income"** means an annual gross income that is not greater than thirty percent (30%) of Area Median Income.

**"Qualifying Rent"** means a monthly rent which does not exceed one-twelfth of 30% of the applicable income level set forth for an Extremely Low-Income household.

**"Restricted Unit"** means a single occupancy unit which is reserved for occupancy at a Qualifying Rent by an Extremely Low-Income tenant in accordance with and as set forth in Sections 2.1 and 2.2.

2. Use and Affordability Restrictions. Owner hereby covenants and agrees, for itself and its successors and assigns, that the Property shall be used solely for the construction and operation of a 5-unit single-family rental housing development in compliance with the Grant Agreement, the development approvals granted by the City of Milpitas, and the requirements set forth herein. Owner represents and warrants that it has not entered into any agreement that would restrict or compromise its ability to comply with the occupancy and affordability restrictions set forth in this Agreement, and Owner covenants that it shall not enter into any agreement that is inconsistent with such restrictions without the express written consent of Agency. Notwithstanding the foregoing or anything to the contrary contained herein, if the terms of financing for the Project require greater affordability restrictions than those imposed hereby, the requirements of such other financing shall prevail for the term thereof.

2.1 Senior Housing. For a term of ninety-nine (99) years commencing upon the date of issuance of a final certificate of occupancy for the Project, each of the five units in the Project shall be restricted for occupancy by one person who is at least 60 years of age or older in compliance with Section 51.3 of the California Civil Code.

2.2 Affordability Requirements. For a term of ninety-nine (99) years commencing upon the date of issuance of a final certificate of occupancy for the Project, all five single resident occupancy units in the Project shall be both Rent-Restricted (as defined below) and occupied (or if vacant, available for occupancy) by Eligible Tenants whose income does not exceed Extremely Low-Income. In the event that recertification of tenant income indicates that the number of Restricted Units actually occupied by Eligible Tenants falls below the number required as specified in this Section, Owner shall rectify the condition by renting the next available unit(s) in the Project to Eligible Tenant(s) until the requirements of this Agreement

are satisfied. A residential unit shall qualify as "**Rent-Restricted**" if the gross rent charged for such unit does not exceed the Qualifying Rent, as adjusted for assumed household size in accordance with the Department of Housing and Community Development ("**HCD**") guidelines.

2.3 Rents for Restricted Units. Rents for Restricted Units shall be limited to Qualifying Rents. Notwithstanding the foregoing, no tenant qualifying for a Restricted Unit shall be denied continued occupancy of a unit in the Project because, after admission, such tenant's adjusted income increases to exceed the qualifying limit for such Restricted Unit. A tenant who at initial occupancy qualifies as Extremely Low-Income shall be treated as continuing to be of Extremely Low-Income, as applicable, so long as the tenant's income does not exceed 140% of the income limit for Extremely Low Income.

2.4 Unit Sizes, Preferences. The Restricted Units shall consist of five single resident occupancy units. In renting Restricted Units, Owner shall give first preference to Eligible Tenants in who live or work in the City of Milpitas, second preference to Eligible Tenants who's parent lives or works in the City of Milpitas, and third preference to Eligible Tenants who live or work in the County of Santa Clara, unless compliance with the foregoing criteria is prohibited by law or by state or federal sources of financing for the Project.

2.5 No Condominium Conversion. Owner shall not convert the Project to condominium or cooperative ownership or sell condominium or cooperative rights to the Project during the term of this Agreement.

2.6 Non-Discrimination; Compliance with Fair Housing Laws.

2.6.1 Fair Housing. Owner shall comply with state and federal fair housing laws in the marketing and rental of the units in the Project. Owner shall accept as tenants, on the same basis as all other prospective tenants, persons who are recipients of federal certificates or vouchers for rent subsidies pursuant to the existing Section 8 program or any successor thereto.

2.6.2 Non-Discrimination. Owner covenants for and for itself and its successors and assigns that there shall be no discrimination against or segregation of a person or of a group of persons on account of race, color, religion, creed, sex, sexual orientation, marital status, familial status, ancestry, disability or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property or the Project, nor shall Owner or any person claiming under or through Owner establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Project. The foregoing covenant shall run with the land. All deeds, leases or contracts made or entered into by Owner, its successors or assigns, as to any portion of the Property or the Project shall contain the following language:

(a) In Deeds:

"Grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through it, that there shall be no discrimination against or segregation of a person or of a group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry or disability in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property herein conveyed

nor shall the grantee or any person claiming under or through the grantee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the property herein conveyed. The foregoing covenant shall run with the land."

(b) In Leases:

"The lessee herein covenants by and for the lessee and lessee's heirs, personal representatives and assigns, and all persons claiming under the lessee or through the lessee, that this lease is made subject to the condition that there shall be no discrimination against or segregation of any person or of a group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry or disability in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the land herein leased nor shall the lessee or any person claiming under or through the lessee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the land herein leased."

(c) In Contracts

"There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry or disability in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property nor shall the transferee or any person claiming under or through the transferee establish or permit any such practice or practices of discrimination or segregation with reference to selection, location, number, use or occupancy of tenants, lessee, subtenants, sublessees or vendees of the land."

3. Reporting Requirements.

3.1. Tenant Certification. Owner or Owner's authorized agent shall obtain from each tenant prior to initial occupancy of each Restricted Unit, and on every anniversary thereafter, a written certificate containing all of the following in such format and with such supporting documentation as Agency may reasonably require:

- (a) The identity and age of the resident who is age 60 or older;
- (b) Any other information reasonably required to demonstrate compliance with Section 2.1 above; and
- (c) Total tenant income.

Owner shall retain such certificates for not less than three (3) years, and upon Agency's request, shall make the originals available for inspection by Agency and shall provide copies of such certificates to Agency.

3.2 Annual Report; Inspections. Owner shall submit an annual report ("**Annual Report**") to the Agency in form satisfactory to Agency, together with a certification that the Project is in compliance with the requirements of this Agreement. The Annual Report shall, at a minimum, include the following information for each single occupancy unit in the Project: (i) unit number; (ii) current rent and other charges; (iii) dates of any vacancies during the previous year; (iv) total income of residents; (v) documentation of source of tenant income; and (vi) the information required by Section 3.1.

Upon Agency's request, Owner shall include with the Annual Report, an income recertification for each tenant, documentation verifying tenant eligibility, and such additional information as Agency may reasonably request from time to time in order to show compliance with this Agreement. The Annual Report shall conform to the format requested by Agency; provided however, during such time that the Project is subject to a regulatory agreement restricting occupancy and/or rents pursuant to requirements imposed in connection with the use of federal low-income housing tax credits or tax-exempt financing, Owner may satisfy the requirements of this Section by providing Agency with a copy of compliance reports required in connection with such financing.

Owner shall permit representatives of Agency to enter and inspect the Property and the Project during reasonable business hours in order to monitor compliance with this Agreement upon 24-hours advance notice of such visit to Owner or to Owner's management agent.

#### 4. Term of Agreement.

4.1 Term of Restrictions. This Agreement shall remain in effect through the 99<sup>th</sup> anniversary of the issuance of the final certificate of occupancy for the Project.

4.2 Effectiveness Succeeds Conveyance of Property. This Agreement shall remain effective and fully binding for the full term hereof regardless of (i) any sale, assignment, transfer, or conveyance of the Property or the Project or any part thereof or interest therein, (ii) any payment, prepayment or extinguishment of any loan or note, or (iii) any reconveyance of the Deed of Trust, unless this Agreement is terminated earlier by Agency in a recorded writing.

4.3 Reconveyance. Upon the termination of this Agreement, the Parties agree to execute and record appropriate instruments to release and discharge the terms of this Agreement; provided, however, the execution and recordation of such instruments shall not be necessary or a prerequisite to the termination of this Agreement in accordance with its terms.

5. Binding Upon Successors; Covenants to Run with the Land. Owner hereby subjects its interest in the Property and the Project to the covenants and restrictions set forth in this Agreement. The Agency and Owner hereby declare their express intent that the covenants and restrictions set forth herein shall be deemed covenants running with the land and shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, transferees, and assigns of Owner and Agency, regardless of any sale, assignment, conveyance or transfer of the Property, the Project or any part thereof or interest therein. Any successor-in-interest to Owner, including without limitation any purchaser, transferee or lessee of the Property or the Project (other than the tenants of the single occupancy units within the Project) shall be subject to all of the duties and obligations imposed hereby for the full term of this Agreement. Each and every contract, deed, ground lease or other instrument affecting or conveying the Property or the Project or any part thereof, shall conclusively be held to have been executed, delivered and

accepted subject to the covenants, restrictions, duties and obligations set forth herein, regardless of whether such covenants, restrictions, duties and obligations are set forth in such contract, deed, ground lease or other instrument. If any such contract, deed, ground lease or other instrument has been executed prior to the date hereof, Owner hereby covenants to obtain and deliver to Agency an instrument in recordable form signed by the parties to such contract, deed, ground lease or other instrument pursuant to which such parties acknowledge and accept this Agreement and agree to be bound hereby.

Owner agrees for itself and for its successors that in the event that a court of competent jurisdiction determines that the covenants herein do not run with the land, such covenants shall be enforced as equitable servitudes against the Property and the Project in favor of Agency.

6. Property Management; Repair and Maintenance; Marketing.

6.1 Management Responsibilities. Owner shall be responsible for all management functions with respect to the Property and the Project, including without limitation the selection of tenants, certification and recertification of income and eligibility, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. Except as Agency may otherwise agree in writing, Agency shall have no responsibility for management or maintenance of the Property or the Project.

6.2 Management Entity. Agency shall have the right to review and approve the qualifications of the management entity proposed by Owner for the Project. The Agency hereby approves Senior Housing Solutions as the initial management entity for the Project. The contracting of management services to a management entity shall not relieve Owner of its primary responsibility for proper performance of management duties.

6.3 Repair, Maintenance and Security. Throughout the term of this Agreement, Owner shall at its own expense, maintain the Property and the Project in good physical condition, in good repair, and in decent, safe, sanitary, habitable and tenantable living conditions in conformity with all applicable state, federal, and local laws, ordinances, codes, and regulations. Without limiting the foregoing, Owner agrees to maintain the Project and the Property (including without limitation, the residential units, common meeting rooms, common areas, landscaping, driveways and walkways) in a condition free of all waste, nuisance, debris, unmaintained landscaping, graffiti, disrepair, abandoned vehicles/appliances, and illegal activity, and shall take all reasonable steps to prevent the same from occurring on the Property or at the Project. Owner shall prevent and/or rectify any physical deterioration of the Property and the Project and shall make all repairs, renewals and replacements necessary to keep the Property and the improvements located thereon in good condition and repair. Owner shall provide adequate security services for occupants of the Project.

6.3.1 Agency's Right to Perform Maintenance. In the event that Owner breaches any of the covenants contained in Section 6.3, and such default continues for a period of ten (10) days after written notice from Agency (with respect to graffiti, debris, and waste material) or thirty (30) days after written notice from Agency (with respect to landscaping, building improvements and general maintenance), then Agency, in addition to any other remedy it may have under this Agreement or at law or in equity, shall have the right, but not the obligation, to enter upon the Property and perform all acts and work necessary to protect, maintain, and preserve the improvements and the landscaped areas on the Property. All costs expended by Agency in connection with the foregoing, shall constitute an indebtedness secured by the



Deed of Trust, and shall be paid by Owner to Agency upon demand. All such sums remaining unpaid thirty (30) days following delivery of Agency's invoice therefor shall bear interest at the rate of 10% per annum.

6.4 Marketing and Management Plan. Not later than 180 calendar days following the issuance of the first building permit for the Project, Owner shall submit for Agency review and approval, a plan for marketing and managing the Property ("**Marketing and Management Plan**"). The Marketing and Management Plan shall address in detail how Owner plans to market the Restricted Units to prospective Eligible Tenants in accordance with fair housing laws and this Agreement, Owner's tenant selection criteria, and how Owner plans to certify the eligibility of Eligible Tenants. The Plan shall also describe the management team and shall address how the Owner and the management entity plan to manage and maintain the Property and the Project. The Plan shall include the proposed management agreement and the form of rental agreement that Owner proposes to enter into with Project tenants. Owner shall abide by the terms of the Marketing and Management Plan in marketing, managing, and maintaining the Property and the Project, and throughout the term of this Agreement, shall submit proposed modifications to Agency for its review and approval.

6.5 Approval of Amendments. If Agency has not responded to any submission of the Management and Marketing Plan, the proposed management entity, or a proposed amendment or change to any of the foregoing within 30 days following Agency's receipt of such plan, proposal or amendment, the plan, proposal or amendment shall be deemed approved by Agency.

6.6 Fees, Taxes, and Other Levies. Owner shall be responsible for payment of all fees, assessments, taxes, charges, liens and levies, including without limitation possessory interest taxes, if applicable, imposed by any public authority or utility company with respect to the Property or the Project, and shall pay such charges prior to delinquency. However, Owner shall not be required to pay any such charge so long as (a) Owner is contesting such charge in good faith and by appropriate proceedings, (b) Owner maintains reserves adequate to pay any contested liabilities, and (c) on final determination of the proceeding or contest, Owner immediately pays or discharges any decision or judgment rendered against it, together with all costs, charges and interest.

6.7 Insurance Coverage. Prior to issuance of building permits for the Project, and continuing throughout the term of this Agreement Owner shall comply with the requirements set forth in Exhibit B, and shall, at Owner's expense, maintain in full force and effect insurance coverage as specified in Exhibit B; provided however, during such time that lenders providing financing for the Project impose insurance requirements that are inconsistent with the requirements set forth in Exhibit B, Owner may satisfy the requirements of this Section by meeting the requirements of such lenders. Notwithstanding the foregoing, throughout the term hereof, Owner shall comply with the provisions of Exhibit B pertaining to (i) provision to Agency of proof of insurance for the Project, (ii) naming of Agency and the City of Milpitas as additional insureds, and (iii) provision to Agency of notice of cancellation or reduction in coverage.

6.8 Property Damage or Destruction. If any part of the Project is damaged or destroyed, Owner shall repair or restore the same, consistent with the occupancy and rent restriction requirements set forth in this Agreement. Such work shall be commenced within 120 days after the damage or loss occurs and shall be completed within one year thereafter, provided that insurance proceeds are available to be applied to such repairs or restoration within such period and the repair or restoration is financially feasible. During such time that lenders or low-income housing tax credit investors providing financing for

the Project impose requirements that differ from the requirements of this Section the requirements of such lenders and investors shall prevail.

7. Recordation; No Subordination. This Agreement shall be recorded in the Official Records of Santa Clara County. Owner hereby represents, warrants and covenants that with the exception of the Permitted Exceptions as defined in the Grant Agreement) and easements of record, if any, absent the written consent of Agency, this Agreement shall not be subordinated in priority to any lien (other than those pertaining to taxes or assessments), encumbrance, or other interest in the Property or the Project. If at the time this Agreement is recorded, any interest, lien, or encumbrance has been recorded against the Project in position superior to this Agreement, upon the request of Agency, Owner hereby covenants and agrees to promptly undertake all action necessary to clear such matter from title or to subordinate such interest to this Agreement consistent with the intent of and in accordance with this Section 7, and to provide such evidence thereof as Agency may reasonably request.

8. Transfer and Encumbrance.

8.1 Restrictions on Transfer and Encumbrance. During the term of this Agreement, except as permitted pursuant to the Grant Agreement or this Agreement, Owner shall not make or permit the occurrence of any Transfer (as defined in the Grant Agreement) of the Project or the Property without the prior written consent of the Agency; provided however, neither the admission of an investor limited partner, nor the transfer by the investor limited partner to an entity in which an affiliate is the general partner or managing member shall require Agency consent.

8.2 Permitted Transfers. The Agency shall not withhold its consent to the following Transfers: (i) a transfer from Owner to an entity which is controlled by the Owner; or (ii) a transfer to the construction or permanent lender for the Project or to a third party by foreclosure, deed in lieu of foreclosure or comparable conversion of any lien on the Project or to any subsequent transfer by such lender or third party following such foreclosure, deed in lieu of foreclosure or comparable conversion; provided that: (a) prior to any of the foregoing transfers (other than to a third party following foreclosure), Owner or the proposed owner shall provide Agency with a copy of the transferee's organizational documents and the final form of the agreement effectuating such transfer, (b) the Project is and shall continue to be operated in compliance with this Agreement, and (c) the transferee executes all documents reasonably requested by the Agency with respect to the assumption of the Owner's obligations under this Agreement, and upon reasonable request of Agency, delivers to the Agency an opinion of transferee's counsel to the effect that this Agreement is the valid, binding and enforceable obligation of such transferee.

In addition, Agency shall not unreasonably withhold its consent to the sale, transfer or other disposition of the Project, in whole or in part, provided that (1) the Project is and shall continue to be operated in compliance with this Agreement; (2) the transferee expressly assumes all obligations of Owner imposed by this Agreement; (3) the transferee executes all documents reasonably requested by the Agency with respect to the assumption of the Owner's obligations under this Agreement, and upon Agency's request, delivers to the Agency an opinion of its counsel to the effect that such document and this Agreement are valid, binding and enforceable obligations of such transferee; and (4) either (A) the transferee has at least three years' experience in the ownership, operation and management of low-income senior rental housing projects of similar size to that of the Project, without any record of material violations of nondiscrimination provisions or other state or federal laws or regulations applicable to such

projects, or (B) the transferee agrees to retain a property management firm with the experience and record described in subclause (A).

8.3 Encumbrances. Owner agrees to use best efforts to ensure that any deed of trust secured by the Project for the benefit of a lender other than Agency ("**Third-Party Lender**") shall contain each of the following provisions: (i) Third-Party Lender shall use its best efforts to provide to Agency a copy of any notice of default issued to Owner concurrently with provision of such notice to Owner (provided however, the failure to do so shall not impair such Third-Party Lender's rights and remedies); (ii) Agency shall have the reasonable right, but not the obligation, to cure any default by Owner within the same period of time provided to Owner for such cure; (iii) provided that Agency has cured any default under Third-Party Lender's deed of trust and other loan documents, Agency shall have the right to foreclose Agency's Deed of Trust and take title to the Project without acceleration of Third-Party Lender's debt; and (iv) Agency shall have the right to transfer the Project without acceleration of Third-Party Lender's debt to a nonprofit corporation or other entity which shall own and operate the Project as an affordable rental housing Project, subject to the prior written consent of the Third-Party Lender. Owner agrees to provide to Agency a copy of any notice of default Owner receives from any Third-Party Lender within three (3) business days following Owner's receipt thereof.

8.4 Mortgagee Protection. No violation of any provision contained herein shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value upon all or any portion of the Project or the Property, and the purchaser at any trustee's sale or foreclosure sale shall not be liable for any violation of any provision hereof occurring prior to the acquisition of title by such purchaser. Such purchaser shall be bound by and subject to this Agreement from and after such trustee's sale or foreclosure sale. Promptly upon determining that a violation of this Agreement has occurred, Agency shall give written notice to the holders of record of any mortgages or deeds of trust encumbering the Project or the Property that such violation has occurred.

## 9. Default and Remedies.

9.1 Events of Default. The occurrence of any one or more of the following events shall constitute an event of default hereunder ("**Event of Default**"):

- (a) The occurrence of a Transfer in violation of Section 8 hereof;
- (b) Owner's failure to maintain insurance on the Property and the Project as required hereunder, and the failure of Owner to cure such default within 10 days;
- (c) Subject to Owner's right to contest the following charges, Owner's failure to pay taxes or assessments due on the Property or the Project or failure to pay any other charge that may result in a lien on the Property or the Project, and Owner's failure to cure such default within 10 days.;
- (d) Owner's default in the performance of any term, provision or covenant under this Agreement or under any other Grant Document (other than an obligation enumerated in this Subsection 9.1), and unless such provision specifies a shorter cure period for such default, the continuation of such default for ten (10) days in the event of a monetary default or thirty (30) days in the event of a non-monetary default following the date upon which Agency shall have given written notice of the default to Owner, or if the nature of any such non-monetary default is such that it cannot be cured within 30 days,

Owner's failure to commence to cure the default within thirty (30) days and thereafter prosecute the curing of such default with due diligence and in good faith, but in no event longer than 120 days from receipt of the notice of default.

9.2 Remedies. If within the applicable cure period, Owner fails to cure a default or fails to commence to cure and diligently pursue completion of a cure, as applicable, or if a cure is not possible, Agency may proceed with any of the following remedies:

- A. Bring an action for equitable relief seeking the specific performance of the terms and conditions of this Agreement, and/or enjoining, abating, or preventing any violation of such terms and conditions, and/or seeking declaratory relief;
- B. Pursuant to the Deed of Trust, foreclose on the Property;
- C. For violations of obligations with respect to rents for Restricted Units, impose as liquidated damages a charge in an amount equal to the actual amount collected in excess of the Qualifying Rent;
- D. Pursue any other remedy allowed at law or in equity.

Each of the remedies provided herein is cumulative and not exclusive. The Agency may exercise from time to time any rights and remedies available to it under applicable law or in equity, in addition to, and not in lieu of, any rights and remedies expressly provided in this Agreement.

10. Indemnification. Notwithstanding the insurance coverage required hereunder, Owner shall defend, indemnify and hold the Agency and its officials, officers, directors, employees, and agents (collectively, the "**Indemnified Parties**") harmless from and against any and all losses, damages, liabilities, claims, demands, judgments, actions, court costs, and legal or other expenses (including reasonable attorneys' fees) which an Indemnified Party may incur as a result of (1) Owner's failure to perform any obligation as and when required by this Agreement; (2) any failure of Owner's representations or warranties to be true and complete in all material respects when made; or (3) any act or omission by Owner, or any of Owner's contractors, subcontractors, agents, employees, licensees or suppliers with respect to the Project or the Property, except to the extent that such losses are caused by the gross negligence or willful misconduct of such Indemnified Party. Owner shall pay immediately upon an Indemnified Party's demand any amounts owing under the indemnity provided under this Section. The duty of Owner to indemnify includes the duty to defend the Indemnified Party in any court action, administrative action, or other proceeding brought by any third party arising in connection with the Project or the Property with counsel reasonably approved by Agency. Owner's duty to indemnify the Indemnified Parties shall survive the expiration or earlier termination of this Agreement.

11. Miscellaneous.

11.1 Reserved.

11.2 Amendments. This Agreement may be amended or modified only by a written instrument signed by both Parties.

11.3 No Waiver. Any waiver by Agency of any term or provision of this Agreement must be in writing. No waiver shall be implied from any delay or failure by Agency to take action on any breach or default hereunder or to pursue any remedy allowed under this Agreement or applicable law. No failure or delay by Agency at any time to require strict performance by Owner of any provision of this Agreement or to exercise any election contained herein or any right, power or remedy hereunder shall be construed as a waiver of any other provision or any succeeding breach of the same or any other provision hereof or a relinquishment for the future of such election.

11.4 Notices. Except as otherwise specified herein, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by:

(i) personal delivery, in which case notice is effective upon delivery;

(ii) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered upon receipt if delivery is confirmed by a return receipt;

(iii) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service;

(iv) facsimile transmission, in which case notice shall be deemed delivered upon transmittal, provided that (a) a duplicate copy of the notice is promptly delivered by first-class or certified mail or by overnight delivery, or (b) a transmission report is generated reflecting the accurate transmission thereof. Any notice given by facsimile shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a nonbusiness day.

**Agency:**                      Redevelopment Agency of the City of Milpitas  
   455 East Calaveras  
   Milpitas, CA 95035  
   Attention: Executive Director

**Developer:**                      Senior Housing Solutions  
   512 Valley Way  
   Milpitas, CA 95035  
   Attention: Bob Campbell

11.5 Further Assurances. The Parties shall execute, acknowledge and deliver to the other such other documents and instruments, and take such other actions, as either shall reasonably request as may be necessary to carry out the intent of this Agreement.

11.6 Parties Not Co-Venturers. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another.

11.7 Action by the Agency. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, consent or request by the Agency is required or permitted under this Agreement, such action shall be in writing, and such action may be given, made or taken by the Agency Executive Director or by any person who shall have been designated by the Agency Executive Director, without further approval by the governing board of the Agency.

11.8 Non-Liability of Agency and Agency Officials, Employees and Agents. No member, official, employee or agent of the Agency or the City of Milpitas shall be personally liable to Owner or any successor in interest, in the event of any default or breach by the Agency, or for any amount of money which may become due to Owner or its successor or for any obligation of Agency under this Agreement.

11.9 Headings; Construction. The headings of the sections and paragraphs of this Agreement are for convenience only and shall not be used to interpret this Agreement. The language of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any Party.

11.10 Time is of the Essence. Time is of the essence in the performance of this Agreement.

11.11 Governing Law. This Agreement shall be construed in accordance with the laws of the State of California without regard to principles of conflicts of law.

11.12 Attorneys' Fees and Costs. If any legal or administrative action is brought to interpret or enforce the terms of this Agreement, the prevailing party shall be entitled to recover all reasonable attorneys' fees and costs incurred in such action.

11.13 Severability. If any provision of this Agreement is held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired thereby.

11.14 Entire Agreement; Exhibits. This Agreement, together with the Grant Documents contains the entire agreement of Parties with respect to the subject matter hereof, and supersedes all prior oral or written agreements between the Parties with respect thereto. The exhibits attached hereto are incorporated by reference.

11.15 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

**SIGNATURES ON FOLLOWING PAGE.**

IN WITNESS WHEREOF, the Parties have executed this Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants as of the date first written above.

**SENIOR HOUSING SOLUTIONS,  
a California public benefit corporation**

By: \_\_\_\_\_  
Bob Campbell  
Executive Director

**REDEVELOPMENT AGENCY  
OF THE CITY OF MILPITAS**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Executive Director

**ATTEST:**

By: \_\_\_\_\_  
Agency Secretary

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Agency Counsel

**SIGNATURES MUST BE NOTARIZED.**

Exhibit A

LEGAL DESCRIPTION

(Attach legal description of Property.)



## Exhibit B

### INSURANCE REQUIREMENTS

Prior to issuance of building permits for the Project and throughout the term of this Agreement, Owner shall obtain and maintain, at Owner's expense, the following policies of insurance.

A. Property Insurance. Insurance for the risks of direct physical loss, with minimum coverage being the perils insured under the standard Causes of Loss - Special form (ISO Form CP 10 30) or its equivalent, covering all improvements, all fixtures, equipment and personal property, located on or in, or constituting a part of, the Property ("**Improvements**"), in an amount equal to one hundred percent (100%) of the full replacement cost of all such property. The insurance shall (a) cover explosion of steam and pressure boilers and similar apparatus, if any, located on the Property, and (b) cover floods if the Property is in a Special Hazard Area, as determined by the Federal Emergency Management Agency or as shown on a National Flood Insurance Program flood map. The insurance required hereunder shall be in amounts sufficient to prevent Owner from becoming a co-insurer under the terms of the applicable policies, with not more than a Ten Thousand Dollars (\$10,000) deductible (or such higher deductible approved by the Agency, which approval shall not be unreasonably withheld) from the loss payable for any casualty. The policies of insurance carried in accordance with this Paragraph A shall contain a "replacement cost endorsement" and an "increased cost of construction endorsement."

B. Liability Insurance. Commercial general liability insurance on an "occurrence basis" covering all claims with respect to injury or damage to persons or property occurring on, in or about the Property and the Improvements. The limits of liability under this Paragraph B shall be not less than Two Million Dollars (\$2,000,000) combined single limit per occurrence, with a deductible no greater than Ten Thousand Dollars (\$10,000) or such higher deductible as may be approved by Agency, which approval shall not be unreasonably withheld.

The insurance shall also include coverage for:

- (i) liability for bodily injury or property damage arising out of the use, by or on behalf of Owner, of any owned, non-owned, leased or hired automotive equipment in the conduct of any and all operations conducted in connection with the Project or the Property;
- (ii) premises and operations including, without limitation, bodily injury, personal injury, death or property damage occurring upon, in or about the Property or the Improvements on any elevators or any escalators therein and on, in or about the adjoining sidewalks, streets and passageways;
- (iii) broad form property damage liability;
- (iv) additional insured and primary insured endorsements protecting the Agency, the City of Milpitas and their respective elected and appointed officials, officers, employees and agents;
- (v) personal injury endorsement.

C. Worker's Compensation Insurance. Worker's compensation insurance, in the amount required under then applicable state law, covering Owner's employees, if any, at work in or upon the Property or engaged in services or operations in connection with the Project or the Property. Owner shall require that any contract entered into by Owner with regard to work to be undertaken on the Property include a contractual undertaking by the contractor to provide worker's compensation insurance for its employees in compliance with applicable state law.

D. Course of Construction Insurance. Course of construction insurance in the same amount as required in Paragraph A above for property insurance, covering all construction activities on the Property.

E. General Insurance Provisions. All policies of insurance provided for in this Exhibit shall be provided under valid and enforceable policies, in such forms and amounts as hereinbefore specified, issued by insurers licensed to do business in the State of California (or approved to do business in California and listed on the California Department of Insurance list of Eligible Surplus Lines Insurers or successor listing) and having a rating of A-VII or better in Best Insurance Guide or, if Best Insurance Guide is no longer in existence, a comparable rating from a comparable rating service. Prior to the issuance of building permits for the Project, and thereafter, not less than thirty (30) days prior to the expiration date of each policy furnished pursuant to this Exhibit C, Owner shall deliver to Agency certificates evidencing the insurance required to be carried by Owner under this Exhibit C. If requested by Agency, Owner shall deliver within ten (10) days following such request, certified, complete copies of the insurance policies required hereunder. Insurance policies to be provided hereunder shall meet the following requirements:

(a) Each policy of insurance obtained pursuant to this Agreement, other than worker's compensation insurance, shall contain endorsements which provide (i) a waiver by the insurer of the right of subrogation against Agency, the City of Milpitas, Owner or any tenant of the Project for negligence of any such person, (ii) a statement that the insurance shall not be invalidated should any insured waive in writing prior to the loss any or all right of recovery against any party for loss accruing to the property described in the insurance policy, and (iii) a provision that no act or omission of Owner which would otherwise result in forfeiture or reduction of the insurance therein provided shall affect or limit the obligation of the insurance company to pay the amount of any loss sustained.

(b) By endorsements, Agency and the City of Milpitas, and their respective elected and appointed officials, officers, employees and agents shall be named as additional insured under the liability insurance required to be maintained by Owner hereunder. Agency shall be named as loss payee on the property insurance policies required to be maintained hereunder.

(c) Each policy required hereunder shall include a Notice of Cancellation or Change in Coverage Endorsement which shall provide that such policy shall not be cancelled or materially changed without at least thirty (30) days' prior written notice by registered or certified mail to Agency.

(d) All insurance policies shall provide that there shall be no exclusion from coverage for cross liability among the listed insureds.

(e) Any certificate of insurance applicable to course of construction insurance to be maintained shall be deposited with Agency prior to commencement of construction of any Improvements.

(f) Each policy shall contain an endorsement that provides that the insurance applies separately to each insured that is seeking coverage or against whom a claim is made, except with respect to the limits of liability.

(g) Each policy shall be written as a primary policy not contributing with and not in excess of coverage that Agency may carry.

(h) Each policy shall expressly provide that Agency shall not be required to give notice of accidents or claims and that Agency shall have no liability for premiums.

F. Blanket Policies. Any insurance provided for in this Exhibit C may be placed by a policy or policies of blanket insurance; provided, however, that such policy or policies provide that the amount of the total insurance allocated to the Property and the Project shall be such as to furnish protection the equivalent of separate policies in the amounts herein required, and provided further that in all other respects any such policy or policies shall comply with the other provisions of this Agreement.

G. Waiver of Subrogation. To the extent permitted by law and the policies of insurance required to be maintained hereunder, and without affecting such insurance coverage, Agency and Owner each waive any right to recover against the other (a) damages for injury or death of persons, (b) damage to property, (c) damage to the Property or the Improvements or any part thereof, or (d) claims arising by reason of any of the foregoing, to the extent that such damages and/or claims are covered (and only to the extent of such coverage) by insurance actually carried by either Agency or Owner. This provision is intended to restrict each party (as permitted by law) to recover against insurance carriers to the extent of such coverage, and waive fully, and for the benefit of each, any rights and/or claims which might give rise to a right of subrogation in any insurance carrier.

H. Compliance with Policy Requirements. Owner shall observe and comply with the requirements of all policies of public liability, fire and other policies of insurance at any time in force with respect to the Property, and Owner shall so perform and satisfy the requirements of the companies writing such policies that at all times companies of good standing shall be willing to write or to continue such insurance.

STATE OF CALIFORNIA                    )  
  )  
COUNTY OF SANTA CLARA            )

On \_\_\_\_\_, 20\_\_\_\_ before me, \_\_\_\_\_ the undersigned,  
personally appeared \_\_\_\_\_

(        )       personally known to me  
(        )       proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) (is/are) subscribed to the within instrument and acknowledged to me  
that (he/she/they) executed the same in (his/her/their) authorized capacity(ies), and that by (his/her/their)  
signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted,  
executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

## GRANT AND DEVELOPMENT AGREEMENT

This Grant and Development Agreement (this "**Agreement**") is entered into effective as of \_\_\_\_\_, 2006 ("**Effective Date**") by and between Senior Housing Solutions, a California public benefit corporation (the "**Grantee**") and the Redevelopment Agency of the City of Milpitas, a public body corporate and politic (the "**Agency**"). Grantee and Agency are hereinafter collectively referred to as the "**Parties**."

### RECITALS

A. Pursuant to authority granted under Community Redevelopment Law (California Health and Safety Code Section 33000 *et seq.*) ("**CRL**"), the Agency has responsibility to implement the redevelopment plan adopted by the City Council of the City of Milpitas, California ("**City**") by Ordinance No. 192 on September 21, 1976, and subsequently amended and restated on June 17, 2003 by Ordinance No. 192.14 (as so amended and restated, the "**Redevelopment Plan**") for the Milpitas Redevelopment Project Area No. 1 ("**Project Area**").

B. California Community Redevelopment law section 33334.2(g)(1) allows for the use of Agency's 20% Low-Income Housing Set-Aside Fund ("**Set-Aside Fund**") outside of the Project Area for low- and moderate-income housing.

C. Grantee is the owner of or has the contractual right to purchase the real property known as Santa Clara Assessor's Parcel No. 022-06-025 located at 751 Vasona Street in the City and more particularly described in Exhibit A attached hereto ("**Property**"). The Property is located outside the Project Area, but will benefit the Project Area by providing housing affordable to extremely low-income seniors. Grantee has proposed to acquire and rehabilitate a single-family house that will consist of five (5) single occupancy affordable housing units ("**Project**"). The Project will provide five (5) units of affordable housing for extremely low-income seniors as more particularly described herein and in a Regulatory Agreement and Declaration of Restrictive Covenants to be recorded against the Property ("**Regulatory Agreement**").

D. The Agency has determined that the Project will be of benefit to the Project Area, will further the goals of the Redevelopment Plan, and will be consistent with the implementation plan adopted in connection therewith.

E. Grantee has requested, and Agency has agreed to provide a grant pursuant to the terms and conditions hereof for the purpose of providing partial financing for the Project.

F. On November 15, 2005, at a joint meeting, the Milpitas City Council ("**City Council**") and the Agency Board approved the allocation of \$250,000 from the Agency's Set-Aside Fund to financially assist with the acquisition of the Property.

G. On April 18, 2006, the City Council approved the allocation of \$150,000 from the City's Community Development Block Grant ("**CDBG**") Fund to financially assist with the Project ("**CDBG Grant**").

H. Grantee intends to finance the initial Project acquisition, development, and closing costs with an interim loan from Lenders for Community Development ("LCD") and permanent financing from the Agency Grant, the Santa Clara County Office of Affordable Housing, the Housing Trust Fund, and City of

Milpitas Rental Rehabilitation Program Funds. The LCD Loan will be repaid from the CDBG Grant, and an Urban County CDBG loan.

I. The Agency has determined that (i) provision of a grant for the Project pursuant to the terms of this Agreement is in the interests of the health, safety and welfare of the residents of the City of Milpitas ("**City**"), and (ii) the Grant is necessary to make the Project economically feasible and affordable to extremely low-income seniors.

J. Concurrently herewith: (i) Grantee shall execute a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing ("**Deed of Trust**") which shall secure the performance of Grantee under this Agreement and the Regulatory Agreement and provide Agency with a security interest in the Property and the Project, and (ii) Grantee and Agency shall execute the Regulatory Agreement which shall restrict occupancy of the Project to extremely low-income seniors and require Project rents to be affordable to extremely low-income seniors for a term of not less than ninety-nine (99) years. This Agreement, the Regulatory Agreement and the Deed of Trust are collectively hereinafter referred to as the "**Grant Documents**."

**NOW THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows.

## **ARTICLE I GRANT TERMS**

1.1 GRANT. Agency agrees to provide a grant to Grantee in the amount of Two Hundred Fifty Thousand Dollars (\$250,000) from the Set-Aside Fund ("**Agency Grant**") upon the terms and conditions and for the purposes set forth in this Agreement. The Agency Grant and the CDBG Grant are hereinafter collectively referred to as the "**Grant**." Provided that Grantee has complied with all conditions precedent to disbursement of the Grant set forth in Section 2.3, the proceeds of the Grant ("**Grant Proceeds**") shall be disbursed in accordance with Section 2.2 hereof. Without limiting the generality of the foregoing, it is expressly understood by the Parties that Agency's obligation to fund the Grant is contingent upon Grantee's provision to the Agency of evidence reasonably satisfactory to the Agency that Grantee has received firm financing commitments and all permits and approvals necessary for the rehabilitation and permanent financing of the Project.

Agency shall have the option to terminate this Agreement, and shall have no obligation to fund the Grant if concurrently with the closing of escrow Grantee does not close on the additional acquisition loans and other financing for the Project in an aggregate amount which, together with other sources of funding committed to Grantee is sufficient to fully finance acquisition of the Property and rehabilitation of the Project. The Parties agree that Agency shall disburse Grant Proceeds only for and to the extent necessary for the purposes set forth in Section 2.1.

1.2 SECURITY. As security for performance of Grantee's obligations under this Agreement and the Regulatory Agreement, Grantee shall execute the Deed of Trust in favor of Agency as beneficiary pursuant to which Agency shall be provided a lien against the Property and the improvements located thereon. The Deed of Trust shall be dated as of the Effective Date, shall be substantially in the form attached hereto as

Exhibit B, and shall be recorded in the official records of Santa Clara County. The Deed of Trust shall be a first lien on the Property, subordinated only to such liens and encumbrances as Agency shall approve in writing or permit pursuant to the Grant Documents.

## ARTICLE II USE AND DISBURSEMENT OF PROCEEDS

2.1 USE OF PROCEEDS. Grantee shall use the Grant Proceeds solely and exclusively for the acquisition of the Property by the Grantee and such other costs related to acquisition of the Project as Agency may approve in writing.

2.2 DISBURSEMENT OF GRANT PROCEEDS.

2.2.1 Escrow. An escrow shall be opened at the office of First American Title Company located in San Jose, California, or such other title company as the Grantee and Seller may agree upon ("**Title Company**" or "**Escrow Agent**") in order to consummate the closing of escrow ("**Closing**") for the transactions contemplated hereby.

2.2.2 Escrow Instructions; Deposit of Funds; Recordation of Documents. Agency and Grantee shall provide Escrow Agent with a copy of this Agreement, which together with such supplemental instructions as Agency or Grantee may provide and which are consistent with the intent of this Agreement or which are otherwise mutually agreed upon by Agency and Grantee, shall serve as escrow instructions for the disbursement of Grant Proceeds.

2.2.3 Closing Date. The Escrow shall Close on a date no later than July 1, 2006 ("**Closing Date**") or a date that is mutually acceptable to the Parties, and that shall occur within thirty (30) days following the Grantee's satisfaction of all conditions precedent to disbursement of Grant proceeds as set forth in Section 2.3, including without limitation, Grantee's receipt of all commitments for permanent financing for the Project and Grantee's deposit of the executed Grant Documents into Escrow.

Upon satisfaction of the conditions set forth in Section 2.3 and prior to the close of escrow for the acquisition of the Property, Agency shall deposit into escrow the Grant Proceeds, the Regulatory Agreement and the Deed of Trust, executed and acknowledged as applicable. On the Closing Date the Escrow Agent shall cause the Regulatory Agreement and the Deed of Trust to be recorded in the Official Records of Santa Clara County.

2.3 CONDITIONS PRECEDENT TO DISBURSEMENT OF GRANT PROCEEDS.

Agency's obligation to disburse the Grant Proceeds is conditioned upon the satisfaction of all of the following conditions:

(a) Grantee's delivery to Agency of each of the Grant Documents fully-executed and acknowledged as appropriate.

(b) Deposit of the Grant Documents into escrow.

(c) Grantee's delivery to Agency of evidence reasonably satisfactory to Agency that Grantee has obtained all necessary permits (including without limitation, building permits), licenses, and approvals required to develop the Project, or that the receipt of such permits is subject only to such conditions as Agency shall reasonably approve;

(d) Grantee's delivery to Agency of evidence reasonably satisfactory to Agency that Grantee has obtained all of the necessary loans, grants, proceeds, or any other financing required to acquire and rehabilitate the Property;

(e) Agency and City shall have approved the final plans and specifications for the Project;

(f) Grantee's acquisition financing for the Project shall have closed, and Grantee shall have delivered to Agency evidence reasonably satisfactory to Agency that Grantee has secured commitments for all financing necessary for the successful rehabilitation of the Project;

(g) The issuance by an insurer satisfactory to Agency of an A.L.T.A. lender's policy of title insurance ("**Title Policy**") for the benefit of Agency, insuring that the lien of the Deed of Trust is subject only to Permitted Exceptions and such other defects, liens, conditions, encumbrances, restrictions, easements and exceptions as Agency may approve in writing and containing such endorsements as Agency may reasonably require, with the cost of such Title Policy to be paid by Grantee;

(h) Grantee's delivery to the Agency of evidence of insurance coverage in accordance with the requirements set forth herein;

(i) Grantee's delivery to Agency and Agency approval of all of the following: (a) Project budget; (b) performance bonds or other assurance of completion reasonably acceptable to Agency pursuant to the requirements set forth herein; (c) construction schedule; and (d) copies of such other documents related to the development and financing of the Project as Agency may reasonably request;

(j) Grantee's delivery to City of evidence reasonable satisfactory to City that there are no mechanics' liens or stop notices related to the Property or the Project, and Grantee's provision to Agency of full waivers or releases of lien claims if required by City;

(k) Grantee's delivery to Agency of each of the following: (i) certified copy of Grantee's tax exempt determination letter from the Internal Revenue Service, (ii) certificate of good standing, certified by the Secretary of State indicating that Grantee is properly organized as a public benefit corporation in the State of California, (iii) certified copy of Grantee's articles of incorporation, and (iv) a certified resolution indicating that Grantee has authorized this transaction and that the persons executing the Grant Documents on Grantee's behalf have been duly authorized to do so;

(l) No material adverse change as determined by Agency in its reasonable judgment shall have occurred in the condition of the Property or the Improvements or in the financial or other condition of Grantee since the date of this Agreement.



2.4 NO OBLIGATION TO DISBURSE PROCEEDS UPON DEFAULT. Notwithstanding any other provision of this Agreement, the Agency shall have no obligation to disburse or authorize the disbursement of any portion of the Grant Proceeds following:

- (i) the failure of any of Grantee's representations and warranties to be true and correct in all material respects;
- (ii) the termination of this Agreement by mutual agreement of the Parties;
- (iii) the conditions to disbursement of the Grant set forth in Section 2.3 have not been satisfied within three (3) months following the Effective Date, unless an extension of such date is approved by Agency in writing; or
- (iv) the occurrence of an Event of Default under any of the Grant Documents or the existence of any condition, event or act which upon the giving of notice or the passage of time or both would constitute an Event of Default by Grantee under any Grant Document.

### ARTICLE III DEVELOPMENT OF THE PROPERTY

3.1 THE PROPERTY. Grantee represents and warrants that as of the Effective Date: (i) Grantee has the contractual right to acquire fee simple title to the Property, and (ii) to the best knowledge of Grantee after reasonable inquiry, the Property is subject to no covenant, condition, restriction or agreement that would prevent the rehabilitation of the Project on the Property in accordance with this Agreement. If at any time the foregoing statements become untrue, the Agency shall have the right to terminate this Agreement upon written notice to Grantee. In the event that Grantee does not acquire fee simple title to the Property by August 31, 2006, this Agreement shall terminate and be of no further force or effect.

3.2 SCOPE OF DEVELOPMENT. Grantee shall develop the Project on the Property in accordance with the terms and conditions of this Agreement and in compliance with the terms and conditions of all approvals, entitlements and permits that the City or any other governmental body or agency with jurisdiction over the Project or the Property has granted or issued as of the date hereof or may hereafter grant or issue in connection with development of the Project, including without limitation, all mitigation measures imposed in connection with environmental review of the Project and all conditions of approval imposed in connection with any entitlements, approvals or permits (all of the foregoing approvals, entitlements, permits, mitigation measures and conditions of approval are hereafter collectively referred to as the "**Conditions of Approval**").

The Project consists of acquisition of a single family home located on the Property, and the rehabilitation of the home to provide five single occupancy units of affordable housing for five (5) seniors (the "**Restricted Units**"), which shall be leased at an affordable cost pursuant to the terms and conditions set forth in Section 3.3 hereof and a Regulatory Agreement substantially in the form attached hereto as Exhibit C that the Parties shall execute concurrently with the execution of this Agreement and which shall be recorded in the Official Records of Santa Clara County on the date that Grantee acquires the Property.

3.3 AFFORDABLE UNITS. Grantee covenants and agrees for itself, its successors and assigns that all five (5) of the units developed within the Project will be made available to persons of extremely low-income (as defined in the Regulatory Agreement) in accordance with the terms hereof and the Regulatory Agreement. Grantee shall comply with all terms and conditions of the Regulatory Agreement.

3.4 PROJECT APPROVALS. Grantee acknowledges and agrees that execution of this Agreement by Agency does not constitute approval for the purpose of the issuance of building permits for the rehabilitation of the Project, does not limit in any manner the discretion of City in such approval process, and does not relieve Grantee from the obligation to obtain all necessary entitlements, approvals, and permits for the rehabilitation of the Project, including without limitation, the approval of architectural plans, the issuance of any certificates regarding historic resources required in connection with the Project (if any), and the completion of any required environmental review of the Project pursuant to CEQA.

Grantee covenants that it shall: (i) obtain all necessary permits and approvals which may be required by Agency, City, or any other governmental agency having jurisdiction over the construction of the Project, (ii) comply with all Conditions of Approval, (iii) comply with all mitigation measures imposed in connection with any environmental review of the Project, and (iv) not commence construction of the Project prior to issuance of building permits.

3.5 FEES. Grantee shall be solely responsible for, and shall promptly pay when due, all customary and usual fees and charges of City in connection with obtaining building permits and other approvals for the Project, including without limitation, those related to the processing and consideration of amendments, if any, to the current entitlements, any related approvals and permits, environmental review, architectural review, historic review, and any subsequent approvals for the Project or the development of the Property.

3.6 DEVELOPMENT SCHEDULE. Grantee shall commence and complete construction of the Project and shall satisfy all other obligations of Grantee under this Agreement within the time periods set forth herein. Grantee shall commence construction of the Project within one hundred twenty (120) days following issuance of building permits for the Project, and shall diligently prosecute to completion the construction of the Project within twelve (12) months following commencement of construction. If Grantee fails to commence or complete the Project in accordance with the foregoing, Agency shall have the right, at its option, to terminate this Agreement and seek all available remedies herein, including specific performance under the Deed of Trust.

3.7 COST OF CONSTRUCTION. Grantee shall be solely responsible for all costs of developing the Property, construction of the Project, and compliance with the Conditions of Approval.

3.8 RIGHTS OF ACCESS. For the purpose of ensuring that the Project is constructed and operated in compliance with this Agreement, Grantee shall permit representatives of the Agency and the City to enter upon the Property to inspect the Project following 24-hours written notice (except in the case of emergency in which case such notice as may be practical under the circumstances shall be provided).

3.8.1 AGENCY DISCLAIMER. Grantee acknowledges that the Agency and City are under no obligation, and neither Agency nor City undertakes or assumes any responsibility or duty to Grantee or to any third party, to in any manner review, supervise, or inspect the progress of construction or the operation of the Project. Grantee and all third parties shall rely entirely upon its or their own supervision and inspection in determining the quality and suitability of the materials and work, the performance of architects,

subcontractors, and material suppliers, and all other matters relating to the construction and operation of the Project. Any review or inspection undertaken by the Agency or the City is solely for the purpose of determining whether Grantee is properly discharging its obligations under this Agreement, and shall not be relied upon by Grantee or any third party as a warranty or representation by the Agency or the City as to the quality of the design or construction of the improvements constructed on the Property ("**Improvements**") or otherwise.

3.9 COMPLIANCE WITH LAWS. Grantee shall carry out the construction of the Project in conformity with all applicable local, state and federal laws, ordinances, rules and regulations, including without limitation, all applicable local, state and federal occupational, safety, health and labor standards.

3.10 CONSTRUCTION PLANS. As used herein "**Construction Plans**" mean all construction documents upon which Grantee and Grantee's contractors shall rely in building the Project and developing the Property (including the landscaping, parking, and common areas) and shall include, without limitation, the site development plan, final architectural drawings, landscaping, exterior lighting and signage plans and specifications, materials specifications, final elevations, and building plans and specifications. The Construction Plans shall be based upon the development approvals issued by the Agency and the City for the Project, and shall not materially deviate therefrom without the express written consent of Agency and City.

3.11 CONSTRUCTION PURSUANT TO PLANS. Unless modified by operation of Section 3.12, all construction of the Project shall be done in accordance with the Construction Plans, the Conditions of Approval, and any other plans or development approvals issued by the Agency or City with respect to the Project or the development of the Property.

3.12 CHANGE IN CONSTRUCTION PLANS. If Grantee desires to make any material change in the approved Construction Plans, Grantee shall submit the proposed change in writing to the Agency and City for their written approval, which approval shall not be unreasonably withheld or delayed if the Construction Plans, as modified by any proposed change, conform to the requirements of this Agreement and any plans or development approvals issued by Agency or City after the Effective Date. Unless a proposed change is approved by Agency or City within thirty (30) days, it shall be deemed rejected. If rejected, the previously approved Construction Plans shall continue to remain in full force and effect.

Any change in the Construction Plans required in order to comply with applicable codes shall be deemed approved, so long as such change does not substantially nor materially change the architecture, design, function, use, or amenities of the Project as shown on the latest approved Construction Plans.

3.13 DEFECTS IN PLANS. Neither Agency nor City shall be responsible to Grantee or to any third party for any defect in the Construction Plans or for any structural or other defect in any work done pursuant to the Construction Plans. Grantee shall indemnify, defend (with counsel approved by Agency) and hold harmless the Indemnitees from and against all Claims arising out of, or relating to, or alleged to arise from or relate to defects in the Construction Plans or defects in any work done pursuant to the Construction Plans whether or not any insurance policies shall have been determined to be applicable to any such Claims. Grantee's indemnification obligations set forth in this Section shall survive the expiration or earlier termination of this Agreement and the recordation of a Certificate of Completion. It is further agreed that Agency and City do not, and shall not, waive any rights against Grantee which they may have

by reason of this indemnity and hold harmless agreement because of the acceptance by Agency or City, or Grantee's deposit with Agency of any of the insurance policies described in this Agreement.

3.14 CERTIFICATE OF COMPLETION FOR PROJECT. Promptly after completion of construction of the Project and the lease of the Restricted Units in accordance with the provisions of this Agreement and the Regulatory Agreement and upon issuance of a Certificate of Occupancy by the City and written request of Grantee, the Agency will provide an instrument ("**Certificate of Completion**") so certifying, provided that at the time such certificate is requested all components of the Project have been completed. Such Certificate of Completion shall be conclusive evidence that Grantee has satisfied its obligations regarding the development of the Property.

The Certificate of Completion shall be issued substantially in the form attached hereto as Exhibit D, and at Grantee's option, shall be recorded in the Official Records of Santa Clara County. The Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of Grantee to any holder of a deed of trust or mortgage securing money loaned to finance the Project or any part thereof and shall not be deemed a notice of completion under the California Civil Code, nor shall such Certificate provide evidence that Grantee has satisfied any obligation that survives the expiration of this Agreement, including without limitation, Grantee's obligations pursuant to the Regulatory Agreement.

3.15 EQUAL OPPORTUNITY. During the construction of the Project, there shall be no discrimination against any person on the basis of race, color, religion, creed, sex, sexual orientation, marital status, ancestry or national origin in the hiring, firing, promoting or demoting of any person engaged in construction of the Project, and Grantee shall direct its contractors and subcontractors to refrain from discrimination on such basis.

### 3.16 FEDERAL AND STATE LABOR REQUIREMENTS

3.16.1 Davis-Bacon Act And Labor Standards. Grantee agrees to comply with the requirements of the Davis Bacon Act as amended, the provision of Contract Work Hours, the Safety Standards Act, the Copeland Anti-Kickback Act (40 U.S.C. 276,327-333) and all other applicable Federal, State and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this agreement.

3.16.2 Prevailing Wage Requirements. To the extent applicable to the Project, Grantee and its contractors and agents shall comply with California Labor Code Section 1720 *et seq.* and the regulations adopted pursuant thereto ("**Prevailing Wage Laws**"), and shall be responsible for carrying out the requirements of such provisions. Grantee is solely responsible for determining whether Prevailing Wage Laws apply to the Project.

Grantee shall indemnify, defend (with counsel reasonably approved by Agency) and hold the Agency, the City, and their respective elected and appointed officers, officials, employees, agents, and representatives (collectively, the "**Indemnitees**") harmless from and against all liability, loss, cost, expense (including without limitation attorneys' fees and costs of litigation), claim, demand, action, suit, judicial or administrative proceeding, penalty, deficiency, fine, order, and damage (all of the foregoing collectively "**Claims**") which directly or indirectly, in whole or in part, are caused by, arise in connection with, result from, relate to, or are alleged to be caused by, arise in connection with, or relate to, the payment or requirement of payment of prevailing wages or the requirement of competitive bidding in the construction of

the Project, the failure to comply with any state or federal labor laws, regulations or standards in connection with this Agreement, including but not limited to the Prevailing Wage Laws, or any act or omission of Grantee related to this Agreement with respect to the payment or requirement of payment of prevailing wages or the requirement of competitive bidding, whether or not any insurance policies shall have been determined to be applicable to any such Claims. It is further agreed that Agency and City do not and shall not waive any rights against Grantee which they may have by reason of this indemnity and hold harmless agreement because of the acceptance by Agency or City, or Grantee's deposit with Agency of any of the insurance policies described in this Agreement. The provisions of this Section 3.16 shall survive the expiration or earlier termination of this Agreement and the issuance of a Certificate of Completion for the Project.

## **ARTICLE IV REPRESENTATIONS, WARRANTIES AND COVENANTS**

4.1 Grantee makes the following representations, warranties and covenants:

(a) LEGAL STATUS; AUTHORITY; OWNERSHIP. Grantee is a tax exempt, public benefit corporation, duly organized, validly existing and in good standing under the laws of the State of California, has all requisite power and authority to own the Property, to develop and operate the Project, and to execute, deliver and perform its obligations under the Grant Documents.

(b) NO VIOLATION. The execution of the Grant Documents and Grantee's performance thereunder does not and will not result in a breach of or constitute a default under any agreement, indenture or other instrument to which Grantee is a party or by which Grantee may be bound.

(c) AUTHORIZATION. The Grant Documents to which Grantee is a party and the transactions contemplated thereby have each been duly authorized by Grantee, and when executed and delivered will each constitute a valid and binding obligation of Grantee, enforceable in accordance with the respective terms thereof.

(d) LITIGATION. There are no pending or to Grantee's knowledge, threatened actions or proceedings before any court or administrative agency which may adversely affect the financial condition or operation of Grantee or Grantee's development of the Project and ownership of the Property and the Improvements.

(e) COMPLIANCE WITH LAWS. Grantee is in compliance in all material respects with all local, state and federal laws, rules, regulations, orders and decrees which are applicable to the Property or to Grantee in relation thereto ("**Applicable Law**") including without limitation, all environmental, health and safety and employment laws.

(f) DISCLOSURE. No representation or warranty made by Grantee in this Agreement or in any of the other Grant Document contains any untrue statement of a material fact or omits to state any material fact necessary to make the statements therein not misleading. There is no fact known to Grantee which has or might reasonably be anticipated to have a material adverse effect on the business, assets,

financial condition of Grantee, or Grantee's ability to develop the Project which has not been disclosed to Agency in writing.

## **ARTICLE V AFFIRMATIVE COVENANTS**

5.1 USE OF FUNDS. Grantee covenants that it shall use the Grant Proceeds solely for purpose of financing the Project in accordance with Section 2.1.

5.2 PAYMENT OF OTHER INDEBTEDNESS. Grantee covenants to punctually pay all charges, assessments, taxes and fees related to the Property or the Improvements and to punctually pay the principal and interest due on any other indebtedness related to the Property or the Improvements now or hereafter at any time owed by the Grantee to the Agency or any other lender.

5.3 MORTGAGES AND DEEDS OF TRUST FOR DEVELOPMENT. Mortgages and deeds of trust or any other reasonable security instrument are permitted to be placed on the Property, but only for the purpose of securing loans approved pursuant to the approved Financing Plan for the purpose of financing the costs of the design and construction of the Project and other expenditures necessary for development and permanent financing of the Project pursuant to this Agreement. Grantee covenants and agrees, on behalf of itself and its successors and assigns, that it shall not enter into any conveyance for such financing without the written approval of the Agency's Executive Director. As used herein, the terms "mortgage" and "deed of trust" shall mean all other appropriate security interests used in financing real estate acquisition, construction and land development.

5.4 ACCOUNTING RECORDS; PROPERTY INSPECTION. Grantee covenants to maintain accurate books and records in accordance with standard accounting principles consistently applied, and to permit the Agency, during business hours and upon reasonable notice to inspect, audit and examine such books and records with respect to the Project, the Property and the Grant and to inspect the Property during normal business hours upon reasonable notice.

5.5 COMPLIANCE WITH LAWS. Grantee covenants to comply with all federal, state and local laws, regulations, ordinances and rules applicable to the Property and the Project. Without limiting the generality of the foregoing, Grantee shall comply with all applicable requirements of state and local building codes and regulations, all applicable Environmental Laws, and all applicable statutes and regulations relating to accessibility for the disabled.

5.6 INSURANCE. Grantee shall maintain and keep in force at Grantee's expense, insurance coverage with respect to the Project and the Property in accordance with the requirements set forth in the DDA.

5.7 FACILITIES. Grantee shall keep the Property and the Improvements, and the personal property used in Grantee's operations in good repair and condition, and from time to time make necessary repairs, renewals and replacements thereto so that the Property and Improvements shall be preserved and maintained.

5.8 INDEMNIFICATION. Grantee shall indemnify, defend (with counsel reasonably acceptable to Agency), and hold harmless the Agency, the City, and their respective elected and appointed officials, officers, agents, and employees (collectively the **Indemnitees**"), from and against, and shall pay on demand, any and all losses, liabilities, damages, costs, claims, demands, penalties, fines, orders, judgments, injunctive or other relief, expenses and charges (including attorneys' fees and expenses) (collectively "**Liabilities**") arising directly or indirectly in any manner in connection with or as a result of (a) any breach of Grantee's covenants under the Grant Documents, (b) any failure of Grantee's representations and warranties to be true and correct in all material respects when made, (c) injury or death to persons or damage to property or other loss occurring on the Property, whether caused by the negligence or any other act or omission of Grantee or any other person or by negligent, faulty, inadequate or defective design, building, construction or maintenance or any other condition or otherwise, or (d) any claim, demand or cause of action, or any action or other proceeding, whether meritorious or not, brought or asserted against any Indemnitee which relates to or arises out of the Property, the Project, the Grant Documents, or any transaction contemplated thereby, or any failure of Grantee to comply with all applicable state, federal and local laws and regulations, including without limitation, applicable provisions of the California Building Standards Code, Labor Code Section 1720 *et seq.* and the regulations adopted pursuant thereto ("**Prevailing Wage Laws**"), and the Americans with Disabilities Act in connection with the construction or operation of the Project. It is further agreed that Agency does not, and shall not, waive any rights against Grantee which it may have by reason of this indemnity and hold harmless agreement because of the acceptance by Agency, or the deposit with Agency, of any of the insurance policies described in the Grant Documents. The representations, warranties and covenants contained in this Section shall survive the expiration or termination of this Agreement, any release or reconveyance of the Deed of Trust, and any foreclosure proceeding, foreclosure sale, or delivery of a deed in lieu of foreclosure.

5.9 NOTICE TO AGENCY. Within three business days after any of the following shall occur, Grantee shall provide written notice thereof to Agency: (1) the occurrence of any Event of Default hereunder of which Grantee acquires knowledge; (2) any change in name, identity, legal structure, business location, or address of Grantee; (3) any uninsured or partially uninsured loss affecting the Property or the Improvements through fire, theft, liability, or property damage in excess of an aggregate of Fifty Thousand Dollars (\$50,000); and (4) Grantee's receipt of a notice of default under any mortgage or other financing document affecting the Property or the Improvements. Grantee shall use best efforts to ensure that Agency shall receive timely notice of, and shall have a right to cure, any Grantee default under any financing document affecting the Property or the Improvements and that provisions mandating such notice and allowing such right to cure shall be included in all such documents. Agency shall record a Request for Notice of Default and Sale. Grantee shall provide to Agency a copy of all notices of default that Grantee receives from the holder of any mortgage or other financing document affecting the Improvements or the Property.

5.10 TAXES AND OTHER LIABILITIES. Grantee shall pay and discharge when due any and all indebtedness, obligations, assessments, taxes, including federal and state payroll and income taxes which are the obligations of Grantee in relation to the Project, the Property, or the Improvements except those that Grantee may in good faith contest or as to which a bona fide dispute may arise, provided provision is made to the satisfaction of Agency for eventual payment thereof in the event that it is found that the same is an obligation of Grantee.

5.11 LITIGATION. Grantee shall provide written notice to Agency within three business days after Grantee acquires knowledge of any litigation pending or threatened against Grantee involving a claim exceeding Fifty Thousand Dollars (\$50,000).

5.12 EXPENSES OF COLLECTION OR ENFORCEMENT. If at any time Grantee defaults under any provision of the Grant Documents, Grantee shall pay to the Agency in addition to any other sums that may be due to Agency, an amount equal to the costs and expenses (including without limitation, attorneys' fees and expenses) Agency incurs in connection with the collection, enforcement, or correction of the default, and such amounts shall be a part of the indebtedness secured by the Deed of Trust.

5.13 HAZARDOUS MATERIALS.

5.13.1 Covenants. Grantee shall not cause or permit any Hazardous Materials (as defined below) to be brought upon, kept, stored or used in, on, or about the Property by Grantee, or the agents, employees, contractors or invitees of Grantee except for materials commonly used in construction activities similar to those related to the Project, or in the operation and maintenance of the Property and the Improvements, in each case in compliance with all applicable laws, and shall not cause any release of Hazardous Materials into, onto, under or through the Property. If any Hazardous Material is discharged, released, dumped, or spilled in, on, under, or about the Property and results in any contamination of the Property or adjacent property, or otherwise results in the release or discharge of Hazardous Materials in, on, under or from the Property, Grantee shall promptly take all actions at Grantee's sole expense as are necessary to comply with all Environmental Laws (as defined below).

**"Hazardous Materials"** means any substance, material or waste which is or becomes regulated by any federal, state or local governmental authority, and includes without limitation (i) petroleum or oil or gas or any direct or indirect product or by-product thereof; (ii) asbestos and any material containing asbestos; (iii) any substance, material or waste regulated by or listed (directly or by reference) as a "hazardous substance", "hazardous material", "hazardous waste", "toxic waste", "toxic pollutant", "toxic substance", "solid waste" or "pollutant or contaminant" in or pursuant to, or similarly identified as hazardous to human health or the environment in or pursuant to, the Toxic Substances Control Act (15 U.S.C. 2601, et seq.); the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601, et seq.), the Hazardous Materials Transportation Authorization Act (49 U.S.C. Section 5101, et seq.), the Resource Conservation and Recovery Act (42 U.S.C. 6901, et seq.), the Federal Water Pollution Control Act (33 U.S.C. Section 1251), the Clean Air Act (42 U.S.C. Section 7401, et seq.), the California Underground Storage of Hazardous Substances Act (California Health and Safety Code Section 25280, et seq.), the California Hazardous Substances Account Act (California Health and Safety Code Section 25300, et seq.), the California Hazardous Waste Act (California Health and Safety Code Section 25100, et seq.), the California Safe Drinking Water and Toxic Enforcement Act (California Health and Safety Code Section 25249.5, et seq.), and the Porter-Cologne Water Quality Control Act (California Water Code Section 13000, et seq.), as they now exist or are hereafter amended, together with any regulations promulgated thereunder; (iv) any substance, material or waste which is defined as such or regulated by any "Superfund" or "Superlien" law, or any Environmental Law; or (v) any other substance, material, chemical, waste or pollutant identified as hazardous or toxic and regulated under any other federal, state or local environmental law, including without limitation, asbestos, polychlorinated biphenyls, petroleum, natural gas and synthetic fuel products and by-products.



**“Environmental Law”** means all federal, state or local statutes, ordinances, rules, regulations, orders, decrees, judgments or common law doctrines, and provisions and conditions of permits, licenses and other operating authorizations regulating, or relating to, or imposing liability or standards of conduct concerning (i) pollution or protection of the environment, including natural resources; (ii) exposure of persons, including employees and agents, to Hazardous Materials (as defined above) or other products, raw materials, chemicals or other substances; (iii) protection of the public health or welfare from the effects of by-products, wastes, emissions, discharges or releases of chemical substances from industrial or commercial activities; (iv) the manufacture, use or introduction into commerce of chemical substances, including without limitation, their manufacture, formulation, labeling, distribution, transportation, handling, storage and disposal; or (v) the use, release or disposal of toxic or hazardous substances or Hazardous Materials or the remediation of air, surface waters, groundwaters or soil, as now or may at any later time be in effect, including but not limited to the Toxic Substances Control Act (15 U.S.C. 2601, et seq.); the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601, et seq.), the Hazardous Materials Transportation Authorization Act (49 U.S.C. Section 5101, et seq.), the Resource Conservation and Recovery Act (42 U.S.C. 6901, et seq.), the Federal Water Pollution Control Act (33 U.S.C. Section 1251), the Clean Air Act (42 U.S.C. Section 7401, et seq.), the California Underground Storage of Hazardous Substances Act (California Health and Safety Code Section 25280, et seq.), the California Hazardous Substances Account Act (California Health and Safety Code Section 25300, et seq.), the California Hazardous Waste Act (California Health and Safety Code Section 25100, et seq.), the California Safe Drinking Water and Toxic Enforcement Act (California Health and Safety Code Section 25249.5, et seq.), and the Porter-Cologne Water Quality Control Act (California Water Code Section 13000, et seq.), as they now exist or are hereafter amended, together with any regulations promulgated thereunder.

5.13.2 Environmental Indemnification. Grantee shall indemnify, defend (with counsel reasonably acceptable to Agency), and hold the Indemnitees harmless from and against Liabilities arising directly or indirectly in any manner connection with or as a result of the breach of Grantee's covenants set forth in Section 5.13.1 or the actual or alleged release or presence of any Hazardous Materials on, under, in or about the Property, whether known or unknown, foreseeable or unforeseeable, regardless of the source of such release or when such release occurred or such presence is discovered. The foregoing indemnity includes, without limitation, all costs of investigation, assessment, containment, removal, remediation of any kind, and disposal of such Hazardous Materials, all costs of determining whether the Property is in compliance with Environmental Laws, all costs associated with bringing the Property into compliance with all applicable Environmental Laws, and all costs associated with claims for damages or injury to persons, property, or natural resources. The indemnity described in this Section shall survive the expiration or termination of this Agreement, the release or reconveyance of the Deed of Trust, and any foreclosure proceeding, foreclosure sale or delivery of deed in lieu of foreclosure.

5.14 NON-DISCRIMINATION. Grantee covenants by and for itself and for its successors and assigns that there shall be no discrimination against or segregation of a person or of a group of persons on account of race, color, religion, creed, sex, sexual orientation, marital status, familial status, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall Grantee or any person claiming under or through Grantee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Property. The Parties acknowledge that occupancy of the Project shall be limited to seniors as described Section 2.1 of the Regulatory Agreement.

5.14.1 Mandatory Language In All Subsequent Deeds, Leases And Contracts. All deeds, leases or contracts made or entered into by Grantee, its successors or assigns, as to any portion of the Property, the Improvements, or the Project, shall contain therein the following language:

(a) In Deeds:

"Grantee herein covenants by and for itself, its successors and assigns that there shall be no discrimination against or segregation of a person or of a group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, disability, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property herein conveyed nor shall the grantee or any person claiming under or through the grantee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the property herein conveyed. The foregoing covenant shall run with the land."

(b) In Leases:

"The lessee herein covenants by and for the lessee and lessee's heirs, personal representatives and assigns and all persons claiming under the lessee or through the lessee that this lease is made subject to the condition that there shall be no discrimination against or segregation of any person or of a group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, disability, national origin or ancestry in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the land herein leased nor shall the lessee or any person claiming under or through the lessee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the land herein leased."

(c) In Contracts:

"There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, disability, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property nor shall the transferee or any person claiming under or through the transferee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land."

5.15 Restrictions on Conveyance, Encumbrance. Grantee shall comply with Article VI of this Agreement pertaining to restrictions on the sale, transfer, encumbrance, and other conveyance of the Property, the Project, and interests therein and changes in identity of Grantee.

**ARTICLE VI**  
**LIMITATIONS ON CHANGE IN OWNERSHIP, MANAGEMENT**  
**AND CONTROL OF GRANTEE**

6.1 IDENTITY OF GRANTEE; CHANGES ONLY PURSUANT TO THIS AGREEMENT. Grantee and its principals have represented that they possess the necessary expertise, skill and ability to carry out the development of the Project on the Property pursuant to this Agreement. The qualifications, experience, financial capability and expertise of Grantee and its principals are of particular concern to the Agency. It is because of those qualifications, experience, financial capability and expertise that the Agency has entered into this Agreement with Grantee. No voluntary or involuntary successor in interest to Grantee shall acquire any rights or powers under this Agreement, except as hereinafter provided.

6.2 PROHIBITION ON TRANSFER. Prior to the expiration of the term of the Regulatory Agreement, Grantee shall not, except as expressly permitted by this Agreement, directly or indirectly, voluntarily, involuntarily or by operation of law make or attempt any total or partial sale, transfer, conveyance, assignment or lease (collectively "**Transfer**") of the whole or any part of the Property, the Project, the Improvements or this Agreement without the prior written approval of the Agency which the Agency may withhold in its sole and absolute discretion. Any such attempt to assign this Agreement without the Agency's consent shall be null and void and shall confer no rights or privileges upon the purported assignee. In addition to the foregoing, prior to the expiration of the term of the Regulatory Agreement, except as expressly permitted by this Agreement, Grantee shall not undergo any significant change of ownership without the prior written approval of Agency. For purposes of this Agreement, a "significant change of ownership" shall mean a transfer of the beneficial interest of more than twenty-five percent (25%) in aggregate of the present ownership and /or control of Grantee, taking all transfers into account on a cumulative basis; provided however, neither the admission of an investor limited partner, nor the transfer by the investor limited partner to an entity in which an affiliate is the general partner or managing member shall be restricted by this provision.

6.3 PERMITTED TRANSFERS. Notwithstanding any contrary provision hereof, the prohibitions set forth in this Article shall not be deemed to prevent: (i) the granting of temporary easements or permits to facilitate development of the Property; (ii) the dedication of any property required pursuant to this Agreement; (iii) the lease of individual residences to tenants for occupancy as their principal residence; (iv) assignments creating security interests for the purpose of financing the acquisition, construction or permanent financing of the Project or the Property pursuant to the approved Financing Plan (subject to the requirements of Article VII) or Transfers directly resulting from the foreclosure of, or granting of a deed in lieu of foreclosure of, such a security interest; (v) any Transfer to a nonprofit public benefit corporation recognized by the Internal Revenue Service to be an exempt organization pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, and controlled by the Grantee, provided that prior to the Transfer Grantee provides to the Agency the articles of incorporation and bylaws of the transferee and other documentation establishing to the Agency's reasonable satisfaction that the corporation is controlled by the Grantee, and the transferee assumes the obligations of Grantee under this Agreement pursuant to an assignment and assumption agreement acceptable to the Agency; (vi) any transfer of limited partnership interests in Grantee in accordance with the Grantee's agreement of limited partnership, as it may be amended from time to time (the "**Partnership Agreement**"), provided that the Partnership Agreement and/or the instrument of Transfer provides for development and operation of the Property and Project in a manner consistent with this Agreement; or (vii) the removal of the general partner by the investor limited

partner for a default under the Partnership Agreement, provided the replacement general partner is reasonably satisfactory to Agency.

6.4 REQUIREMENTS FOR PROPOSED TRANSFERS. The Agency may, in the exercise of its sole discretion, approve a transfer of this Agreement, the Property or portion thereof only if all of the following requirements are met (provided however, the requirements of this Section 6.4 shall not apply to Transfers described in clauses (i) through (v) of Section 6.3):

(i) The proposed transferee demonstrates to the Agency's satisfaction that it has the qualifications, experience and financial resources necessary and adequate as may be reasonably determined by the Agency to competently complete construction of the Project and to otherwise fulfill the obligations undertaken by the Grantee under this Agreement.

(ii) The Grantee and the proposed transferee shall submit for Agency review and approval all instruments and other legal documents proposed to effect any Transfer of this Agreement, the Property or interest therein together with such documentation of the proposed transferee's qualifications and development capacity as the Agency may reasonably request.

(iii) The proposed transferee shall expressly assume all of the rights and obligations of the Grantee under the Grant Documents arising after the effective date of the Transfer and all obligations of Grantee arising prior to the effective date of the Transfer (unless Grantee expressly remains responsible for such obligations).

(iv) The Transfer shall be effectuated pursuant to a written instrument satisfactory to the Agency in form recordable in the Official Records of Santa Clara County.

Consent to any proposed Transfer may be given by the Agency's Executive Director unless the Executive Director, in his or her discretion, refers the matter of approval to the Agency's governing board.

6.5 EFFECT OF TRANSFER WITHOUT AGENCY CONSENT.

6.5.1 In the absence of specific written agreement by the Agency, no Transfer by Grantee shall be deemed to relieve the Grantee or any other party from any obligation under this Agreement.

6.5.2 If, in violation of this Agreement, the Grantee Transfers all or any part of the Property or the improvements thereon prior to the recordation of the Certificate of Completion for the Project, the Agency shall be entitled to receive from Grantee the amount by which the consideration payable for such Transfer exceeds the sum of (a) the purchase price paid by the Grantee to the Agency for the Property, and (b) the costs incurred by Grantee in connection with the improvement and development of the Property, including carrying charges, interest, fees, taxes, assessments and escrow fees. Such excess consideration shall belong to and be paid to the Agency by the Grantee and until so paid, the Agency shall have a lien on the Property for such amount. The provisions of this Section 6.5.2 have been agreed upon so as to discourage land speculation by Grantee; accordingly, these provisions shall be given a liberal interpretation to accomplish that end. Following recordation of the Certificate of Completion, the provisions of this Section 6.5.2 shall have no further force and effect.

6.5.3 Without limiting any other remedy Agency may have under this Agreement, or under law or equity, this Agreement may be terminated by Agency if without the prior written approval of the Agency, Grantee assigns or Transfers this Agreement or the Property prior to the Agency's issuance of a Certificate of Completion.

## **ARTICLE VII FINANCING AND RIGHTS OF MORTGAGEES**

7.1 MORTGAGES AND DEEDS OF TRUST FOR DEVELOPMENT. Mortgages and deeds of trust or any other reasonable security instrument are permitted to be placed on the Property, but only for the purpose of securing loans approved pursuant to the approved Financing Plan for the purpose of financing the costs of the design and construction of the Project and other expenditures necessary for development and permanent financing of the Project pursuant to this Agreement. Grantee covenants and agrees, on behalf of itself and its successors and assigns, that it shall not enter into any conveyance for such financing without the prior written approval of the Agency's Executive Director. As used herein, the terms "mortgage" and "deed of trust" shall mean all other appropriate security interests used in financing real estate acquisition, construction and land development.

7.2 HOLDER NOT OBLIGATED TO CONSTRUCT IMPROVEMENTS. The holder of any mortgage or deed of trust authorized by this Agreement shall not be obligated to construct or complete the Improvements or to guarantee such construction or completion. Nothing in this Agreement shall be deemed to or be construed to permit or authorize any such holder to devote the Property to any uses or to construct any improvements thereon other than those uses or Improvements provided for or authorized by this Agreement.

7.3 NOTICE OF DEFAULT; RIGHT TO CURE. Whenever Agency delivers any notice of default or demand to Grantee with respect to the commencement, completion, or cessation of the construction of the Improvements, the Agency shall concurrently deliver a copy of such notice to each holder of record of any mortgage or deed of trust secured by the Property, provided that Agency has been provided an address for such notices. Agency shall have no liability to the holder of any such holder for any failure by the Agency to provide notice to such holder. Each such holder shall have the right, but not the obligation, at its option, within ninety (90) days after the receipt of the copy of the notice, to cure or remedy or, if the default is of a nature that it cannot be cured within such time period, to commence to cure or remedy any default hereunder. In the event possession of the Property (or portion thereof) is required to effectuate such cure or remedy, the holder shall be deemed to have timely cured or remedied if it commences the proceedings necessary to obtain possession thereof within ninety (90) days after receipt of the copy of the notice, diligently pursues such proceedings to completion, and, after obtaining possession, diligently completes such cure or remedy. Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction or completion of the Improvements (beyond the extent necessary to conserve or protect such improvements or construction already made) without first having expressly assumed in writing Grantee's obligations to the Agency under this Agreement. The holder, in that event, must agree to complete, in the manner provided in this Agreement, the Improvements to which the lien or title of such holder relates. Any such holder properly completing the Improvements shall be entitled to a Certificate of Completion upon compliance with the requirements of this Agreement.

7.4 FAILURE OF HOLDER TO COMPLETE IMPROVEMENTS. In any case where six (6) months after occurrence of an Event of Default by the Grantee in completion of construction of the Improvements, the holder of record of any mortgage or deed of trust, has not exercised its option to construct the Improvements, or having first exercised its option to construct, has not proceeded diligently with such construction, the Agency shall be afforded those rights against such holder it would otherwise have against the Grantee under this Agreement. In addition, the Agency shall have the right prior to foreclosure or transfer of deed in lieu of foreclosure to purchase the mortgage or deed of trust by payment to the holder of the amount of the unpaid debt, plus any accrued and unpaid interest and other charges properly payable under the mortgage or deed of trust. If the ownership of the Property has vested in the holder, the Agency shall have the right for sixty (60) days after such vesting to acquire the Property from the holder upon payment of an amount equal to the sum of the following:

- (a) The unpaid mortgage or debt secured by a deed of trust at the time title became vested in the holder (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings);
- (b) All expenses with respect to foreclosure;
- (c) The net expense, if any (exclusive of general overhead), incurred by the holder as a direct result of the subsequent ownership or management of the Property (or portion thereof);
- (d) The costs of any improvements made by such holder;
- (e) An amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage or deed of trust debt and such debt had continued in existence to the date of payment by the Agency.

7.5 RIGHT OF AGENCY TO CURE DEFAULTS. In the event of a breach or default by Grantee under a mortgage or deed of trust secured by the Property, and the holder of any mortgage or deed of trust has not exercised its option to cure the default, Agency may cure the default, without acceleration of the subject loan, following prior notice thereof to Grantee. In such event, Grantee shall be liable for, and Agency shall be entitled to reimbursement from Grantee for all costs and expenses incurred by Agency associated with and attributable to the curing of the default or breach. Agency shall also be entitled to record a lien upon the Property to the extent of such incurred costs and disbursements.

7.6 HOLDER TO BE NOTIFIED. The provisions of this Article VII shall be incorporated into the relevant deed of trust or mortgage to the extent deemed necessary by, and in form and substance reasonably satisfactorily to the Agency, or shall be acknowledged by the holder of such instrument prior to its creating any security right or interest in the Property.

7.7 ESTOPPEL CERTIFICATES. Either Grantee or Agency may, at any time, and from time to time, deliver written notice to the other party requesting such party to certify in writing that, to the knowledge of the certifying party (i) this Agreement is in full force and effect and a binding obligation of the parties, (ii) this Agreement has not been amended or modified either orally or in writing, or if so amended, identifying the amendments, and (iii) the requesting party is not in default in the performance of its obligations under this Agreement, or if in default, such notice shall describe the nature and amount of any such default. A party receiving a request hereunder shall execute and return such certificate within thirty (30) days following the

receipt thereof. The Agency Executive Director is authorized to execute any certificate requested by Grantee hereunder.

## ARTICLE VIII EVENTS OF DEFAULT

### 8.1 GRANTEE'S DEFAULT

The occurrence of any one or more of the following events shall constitute an event of default on the part of the Grantee ("**Grantee Event of Default**"):

(a) Grantee fails to commence or complete construction of the Project within the times set forth in Section 3.6, or abandons or suspends construction of the Project prior to completion of all construction for a period of sixty (60) days;

(b) a Transfer occurs, either voluntarily or involuntarily, in violation of Article VI;

(c) Grantee shall have voluntarily suspended its business or Grantee shall have been dissolved or terminated;

(d) Grantee shall have assigned its assets for the benefit of its creditors (other than pursuant to a mortgage loan) or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within sixty (60) days after such event (unless a lesser time period is permitted for cure under any other mortgage on the Property, in which event such lesser time period shall apply under this subsection as well) or prior to any sooner sale pursuant to such sequestration, attachment, or execution;

(e) if, pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors ("**Bankruptcy Law**"), Grantee (i) commences a voluntary case or proceeding; (ii) consents to the entry of an order for relief against Grantee in an involuntary case; (iii) consents to the appointment of a trustee, receiver, assignee, liquidator or similar official for Grantee; (iv) makes an assignment for the benefit of its creditors; or (v) admits in writing its inability to pay its debts as they become due;

(f) if a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that (i) is for relief against Grantee or any general partner thereof in an involuntary case, (ii) appoints a trustee, receiver, assignee, liquidator or similar official for Grantee or any general partner thereof or substantially all of such entity's assets, (iii) orders the liquidation of Grantee or any general partner thereof, or (iv) issues or levies a judgment, writ, warrant of attachment or similar process against the Property or the Project, and in each case the order or decree is not released, vacated, dismissed or fully bonded within 60 days after its issuance;

(g) if an event of default has been declared by the holder of any debt instrument secured by a mortgage or deed of trust on the Project or Grantee's interest in the Property and such holder exercises a

right to declare all amounts due under that debt instrument immediately due and payable, subject to the expiration of any applicable cure period set forth in such holder's documents;

(h) if the Grantee fails to maintain insurance on the Property and the Project as required pursuant to the Grant Documents and Grantee fails to cure such default within 10 days;

(i) subject to Grantee's right to contest the following charges pursuant to the Grant Documents, if the Grantee fails to pay taxes or assessments due on the Property or the Project or fails to pay any other charge that may result in a lien on the Property or the Project, and Grantee fails to cure such default within 10 days;

(j) if any representation or warranty contained in the Grant Documents or any certificate furnished in connection with the Grant Proceeds proves to have been false or misleading in any material adverse respect when made; or

(k) if an Event of Default shall have been declared under any other Grant Document, subject to the expiration of any applicable cure period set forth in such documents.

If the Grantee defaults in the performance of any term, provision, covenant or agreement (other than an obligation enumerated in this Article VIII) contained in this Agreement or in any other Grant Document, and unless such document specifies a shorter cure period for such default, the default continues for ten (10) days in the event of a monetary default or thirty (30) days in the event of a nonmonetary default after the date upon which Agency shall have given written notice of the default to Grantee, provided that in the case of a nonmonetary default that is not susceptible of cure within thirty (30) days, an Event of Default shall not arise hereunder if Grantee commences to cure the default within thirty (30) days and thereafter prosecutes the curing of such default to completion with due diligence and in good faith, but in no event longer than 120 days from the receipt of notice of default.

8.2 AGENCY DEFAULT. An event of default on the part of Agency ("**Event of Agency Default**") shall arise hereunder if Agency fails to keep, observe, or perform any of its covenants, duties, or obligations under this Agreement, and the default continues for a period of thirty (30) days after written notice thereof from Grantee to Agency, or in the case of a default which cannot with due diligence be cured within thirty (30) days, Agency fails to commence to cure the default within thirty (30) days of such notice and thereafter fails to prosecute the curing of such default with due diligence and in good faith to completion.

## **ARTICLE IX REMEDIES**

9.1 REMEDIES AND RIGHTS UPON DEFAULT. Upon the occurrence of an Event of Default and the expiration of any applicable cure period, Agency shall have all remedies available to it under law or equity, including, but not limited to the following, and Agency may, at its election, without notice to or demand upon Grantee, except for notices or demands required by law or expressly required pursuant to the Grant Documents, exercise one or more of the following remedies:



- a) Seek specific performance to enforce the terms of the Grant Documents;
- b) Foreclose on the Property pursuant to the Deed of Trust; or
- c) Pursue any and all other remedies available under law to enforce the terms of the Grant Documents and Agency's rights thereunder.

9.2 **REMEDIES CUMULATIVE.** Each of the remedies provided herein is cumulative and not exclusive of, and shall not prejudice any other remedy provided in any other Grant Document. The Agency may exercise from time to time any rights and remedies available to it under applicable law, in addition to, and not in lieu of, any rights and remedies expressly granted in this Agreement or in any other instrument or notice, demand or legal process of any kind.

## **ARTICLE X MISCELLANEOUS**

10.1 **NOTICES.** Except as otherwise specified in this Agreement, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other Party in accordance with this Section. All such notices shall be sent by:

- a) personal delivery, in which case notice shall be deemed delivered upon receipt;
- b) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered two (2) business days after deposit, postage prepaid in the United States mail;
- c) nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) day after deposit with such courier; or
- d) facsimile transmission, in which case notice shall be deemed delivered on transmittal, provided that a transmission report is generated reflecting the accurate transmission thereof.

**Agency:**                      Redevelopment Agency of the City of Milpitas  
    455 East Calaveras  
    Milpitas, CA 95035  
    Attention: Executive Director

**Grantee:**                      Senior Housing Solutions  
    512 Valley Way  
    Milpitas, CA 95035  
    Attention: Bob Campbell

10.2 **COUNTERPARTS.** This Agreement may be executed in multiple counterparts each of which shall be an original and all of which taken together shall constitute one and the same instrument.

10.3 SEVERABILITY. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the Parties are materially altered or abridged by such invalidation, voiding or unenforceability.

10.4 LEGAL ACTIONS; ATTORNEYS' FEES. In the event any legal action is commenced to interpret or to enforce the terms of this Agreement or to collect damages as a result of any breach thereof, the Party prevailing in any such action shall be entitled to recover against the other Party all reasonable attorneys' fees and costs incurred in such action.

10.5 CAPTIONS; INTERPRETATION. The captions of the Sections and Articles of this Agreement are for convenience only and are not intended to affect the interpretation or construction of the provisions herein contained. The language of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any Party. Time is of the essence in the performance of this Agreement.

10.6 FURTHER ASSURANCES. The Parties agree to execute, acknowledge and deliver to the other such other documents and instruments, and take such other actions, as either shall reasonably request as may be necessary to carry out the intent of this Agreement.

10.7 PARTIES NOT CO-VENTURERS. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another.

10.8 GOVERNING LAW; VENUE. This Agreement shall in all respects be construed and enforced in accordance with laws of the State of California without regard to principles of conflicts of laws. The Parties consent to the jurisdiction of any federal or state court in the jurisdiction in which the Property is located (the "**Property Jurisdiction**"). Grantee agrees that any controversy arising under or in relation to this Agreement or any other Grant Document shall be litigated exclusively in courts having jurisdiction in the Property Jurisdiction. Grantee irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise.

10.9 WAIVER; MODIFICATION AND AMENDMENT. No failure or delay on the part of the Agency in exercising any right, power, or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power, or remedy preclude any other or further exercise thereof or the exercise of any other right, power, or remedy hereunder. No modification or waiver of any provision of this Agreement, nor any consent to any departure by Grantee therefrom, shall in any event be effective unless the same shall be in writing, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No notice to or demand on the Grantee in any case shall entitle the Grantee to any other or further notice or demand in similar or other circumstances. No amendment to or modification of this Agreement shall be effective unless and until such amendment or modification is in writing, properly approved in accordance with applicable procedures, and executed by the Parties.

10.10 ASSIGNMENT. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns. Notwithstanding the foregoing, Agency's obligation to make the

Grant is personal to Grantee, and shall not be assignable by Grantee by operation of law or otherwise absent the express written consent of Agency, and any such assignment by operation of law or otherwise shall be void.

10.11 NO THIRD PARTY BENEFICIARIES. There shall be no third party beneficiaries to this Agreement.

10.12 ENTIRE AGREEMENT; EXHIBITS. This Agreement, together with the other Grant Documents, constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes any and all prior or contemporaneous oral or written agreements and negotiations between the Parties with respect thereto. Exhibits A through D attached hereto are incorporated herein by reference as though fully set forth herein.

10.13 SURVIVAL. All representations made by Grantee herein and the provisions of Sections 5.8, 5.13.2, 5.14, 5.14.1, and 5.15 hereof shall survive the expiration or termination of this Agreement, any release or reconveyance of the Deed of Trust, and any foreclosure proceeding, foreclosure sale, or delivery of a deed in lieu of foreclosure. The representations of Grantee made herein have been or will be relied upon by the Agency, notwithstanding any investigation made by the Agency or on its behalf.

10.14 AGENCY STATUS. Grantee recognizes and agrees that Agency is not a commercial lending institution, but a public agency exercising its authority to protect the public health, safety and welfare. Any duties or obligations which a commercial lending institution may have to Grantee shall not apply to this transaction except as set forth herein and in the Grant Documents.

10.15 ACTION BY THE AGENCY. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, or consent by the Agency is required or permitted under this Agreement, such action shall be in writing, and such action may be given, made or taken by the Agency Executive Director or by any person who shall have been designated by the Agency Executive Director, without further approval by the Agency governing board. Agency shall use reasonable best efforts to respond to requests for any such approval, notice, direction, or consent in a timely manner.

10.16 NON-LIABILITY OF AGENCY AND AGENCY OFFICIALS, EMPLOYEES AND AGENTS. No member, official, employee or agent of the Agency shall be personally liable to Grantee or any successor in interest to any of the foregoing in the event of any default or breach by the Agency, or for any amount of money which may become due to Grantee or Grantee's successor in interest or for any obligation of Agency under this Agreement.

10.17 RIGHT OF ACCESS. Grantee hereby grants to Agency and Agency's agents and employees the right, upon reasonable notice to Grantee of not less than two business days, to enter upon the Property and the Improvements for the purpose of inspecting, examining, surveying and reviewing the same for the purpose of ensuring compliance with the Grant Documents.

**SIGNATURES ON FOLLOWING PAGE.**

**IN WITNESS WHEREOF**, the Parties have each caused this Grant Agreement to be duly executed as of the date first written above.

**AGENCY:**

**REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS  
A PUBLIC BODY, CORPORATE AND POLITIC**

By: \_\_\_\_\_

Its: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Agency Secretary

Approved as to Form:

\_\_\_\_\_  
Agency Counsel

**GRANTEE:**

**SENIOR HOUSING SOLUTIONS,  
a California public benefit corporation**

By: \_\_\_\_\_  
Bob Campbell  
Executive Director

Exhibit A  
**PROPERTY**  
(Attach legal description.)

Exhibit B

**FORM OF DEED OF TRUST**  
(Attach form of Deed of Trust.)

Exhibit C

**FORM OF REGULATORY AGREEMENT  
(Attach Regulatory Agreement)**

Exhibit D

**FORM OF CERTIFICATE OF COMPLETION**

**(Attach Certificate of Completion)**



Recording requested by and when recorded  
mail to:

Redevelopment Agency of the City of Milpitas  
455 East Calaveras  
Milpitas, CA 95035  
Attention: Executive Director

EXEMPT FROM RECORDING FEES PER  
GOVERNMENT CODE §§6103, 27383

Space above this line for Recorder's use.

## DEED OF TRUST WITH ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING

THIS DEED OF TRUST WITH ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING ("**Deed of Trust**") is made as of June \_\_\_\_, 2006, by Senior Housing Solutions, a California public benefit corporation ("**Trustor**") to Financial Title Company as trustee ("**Trustee**"), for the benefit of the Redevelopment Agency of the City of Milpitas, a public body corporate and politic ("**Beneficiary**").

### RECITALS

A. Trustor owns fee simple title to the land described in Exhibit A attached hereto and incorporated herein by this reference (the "**Land**"). The Land is located within the City of Milpitas, and concurrently with the recordation of this instrument, Beneficiary and Trustor have entered into an Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants dated as of \_\_\_\_, 2006 and executed by and among Beneficiary and Trustor (the "**Regulatory Agreement**"). The Regulatory Agreement will be recorded in the Official Records of Santa Clara County concurrently herewith. Capitalized terms used herein without definition shall have the meaning ascribed to such terms in the Regulatory Agreement.

B. Beneficiary and Trustor have entered into a Grant and Development Agreement dated as of \_\_\_\_, 2006 and executed by and among Beneficiary and Trustor (the "**Grant Agreement**").

C. Pursuant to the Grant Agreement, Beneficiary will provide a grant to Trustor in the amount of Two Hundred Fifty Thousand Dollars (\$250,000) for the purpose of partially financing the acquisition and rehabilitation of a single family home that will consist of five (5) single resident occupancy units affordable to five (5) extremely low-income senior households and related improvements on the Land ("**Project**").

D. As a condition precedent to the making of the Grant, Beneficiary has required that Trustor enter into this Deed of Trust and grant to Trustee for the benefit of Beneficiary, a lien and security interest in the Property (as hereafter defined) to secure Trustor's performance under the Regulatory Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed as follows:

1. Grant in Trust. In consideration of the foregoing and for the purpose of securing payment and performance of the Secured Obligations defined and described in Section 2, Trustor hereby irrevocably and

unconditionally grants, conveys, transfers and assigns to Trustee, in trust for the benefit of Beneficiary, with power of sale and right of entry and possession, all estate, right, title and interest which Trustor now has or may later acquire in and to the Land, and all of the following, whether presently owned or hereafter acquired:

- a. All buildings, structures, and improvements, now or hereafter located or constructed on the Land ("**Improvements**");
- b. All appurtenances, easements, rights of way, pipes, transmission lines or wires and other rights used in connection with the Land or the Improvements or as a means of access thereto, whether now or hereafter owned or constructed or placed upon or in the Land or Improvements and all existing and future privileges, rights, franchises and tenements of the Land, including all minerals, oils, gas and other commercially valuable substances which may be in, under or produced from any part of the Land, and all water rights, rights of way, gores or strips of land, and any land lying in the streets, ways, and alleys, open or proposed, in front of or adjoining the Land and Improvements (collectively, "**Appurtenances**");
- c. All machinery, equipment, fixtures, goods and other personal property of the Trustor, whether moveable or not, now owned or hereafter acquired by the Trustor and now or hereafter located at or used in connection with the Land, the Improvements or Appurtenances, and all improvements, restorations, replacements, repairs, additions or substitutions thereto (collectively, "**Equipment**");
- d. All existing and future leases, subleases, licenses, and other agreements relating to the use or occupancy of all or any portion of the Land or Improvements (collectively, "**Leases**"), all amendments, extensions, renewals or modifications thereof, and all rent, royalties, or other payments which may now or hereafter accrue or otherwise become payable thereunder to or for the benefit of Trustor, including but not limited to security deposits (collectively, "**Rents**");
- e. All insurance proceeds and any other proceeds from the Land, Improvements, Appurtenances, Equipment, Leases, and Rents, including without limitation, all deposits made with or other security deposits given to utility companies, all claims or demands relating to insurance awards which the Trustor now has or may hereafter acquire, including all advance payments of insurance premiums made by Trustor, and all condemnation awards or payments now or later made in connection with any condemnation or eminent domain proceeding ("**Proceeds**");
- f. All revenues, income, rents, royalties, payments and profits produced by the Land, Improvements, Appurtenances and Equipment, whether now owned or hereafter acquired by Trustor ("**Gross Revenues**");
- g. All architectural, structural and mechanical plans, specifications, design documents and studies produced in connection with development of the Land and construction of the Improvements (collectively, "**Plans**"); and
- h. All interests and rights in any private or governmental grants, subsidies, loans or other financing provided in connection with development of the Land and construction of the Improvements (collectively, "**Financing**").

All of the above-referenced interests of Trustor in the Land, Improvements, Appurtenances, Equipment, Leases, Rents, Proceeds, Gross Revenues, Plans and Financing as hereby conveyed to Trustee or made subject to the security interest herein described are collectively referred to herein as the "**Property.**"

2. Obligations Secured. This Deed of Trust is given for the purpose of securing payment and performance of the following (collectively, the "**Secured Obligations**"): (i) all present and future obligations of Trustor to Beneficiary under the Grant Agreement; (ii) all present and future obligations of Trustor to Beneficiary under the Regulatory Agreement, including but not limited to the ninety-nine (99) year restriction of the project to occupancy by extremely low-income seniors as more particularly described in the Regulatory Agreement, (iii) all additional present and future obligations of Trustor to Beneficiary under any other agreement or instrument acknowledged by Trustor (whether existing now or in the future) which states that it is or such obligations are, secured by this Deed of Trust; (iv) all obligations of Trustor to Beneficiary under all modifications, supplements, amendments, renewals, or extensions of any of the foregoing, whether evidenced by new or additional documents; and (v) reimbursement of all amounts advanced by or on behalf of Beneficiary to protect Beneficiary's interests under this Deed of Trust or any other Agency Document as such may be modified, supplemented, amended, renewed or extended.
3. Assignment of Rents, Issues, and Profits. Trustor hereby irrevocably, absolutely, presently and unconditionally assigns to Beneficiary the Rents, royalties, issues, profits, revenue, income and proceeds of the Property. This is an absolute assignment and not an assignment for security only. Beneficiary hereby confers upon Trustor a license to collect and retain such Rents, royalties, issues, profits, revenue, income and proceeds as they become due and payable prior to any Event of Default hereunder. Upon the occurrence of any such Event of Default, Beneficiary may terminate such license without notice to or demand upon Trustor and without regard to the adequacy of any security for the indebtedness hereby secured, and may either in person, by agent, or by a receiver to be appointed by a court, enter upon and take possession of the Property or any part thereof, and sue for or otherwise collect such rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, to any indebtedness secured hereby, and in such order as Beneficiary may determine. Beneficiary's right to the rents, royalties, issues, profits, revenue, income and proceeds of the Property does not depend upon whether or not Beneficiary takes possession of the Property. The entering upon and taking possession of the Property, the collection of such rents, issues, and profits, and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice. If an Event of Default occurs while Beneficiary is in possession of all or part of the Property and/or is collecting and applying Rents as permitted under this Deed of Trust, Beneficiary, Trustee and any receiver shall nevertheless be entitled to exercise and invoke every right and remedy afforded any of them under this Deed of Trust and at law or in equity, including the right to exercise the power of sale granted hereunder. Regardless of whether or not Beneficiary, in person or by agent, takes actual possession of the Land or the Improvements, Beneficiary shall not be deemed to be a "mortgagee in possession," shall not be responsible for performing any obligation of Trustor under any Lease, shall not be liable in any manner for the Property, or the use, occupancy, enjoyment or operation of any part of it, and shall not be responsible for any waste committed by Trustor, lessees or any third parties, or for dangerous or defective condition of the Property or any negligence in the management, repair or control of the Property. Absent Beneficiary's written consent, Trustor shall not accept prepayment of Rents for any rental period exceeding one month.

4. Security Agreement. The parties intend for this Deed of Trust to create a lien on the Property, and an absolute assignment of the Rents and Leases, all in favor of Beneficiary. The parties acknowledge that some of the Property may be determined under applicable law to be personal property or fixtures. To the extent that any Property may be or be determined to be personal property, Trustor as debtor hereby grants to Beneficiary as secured party a security interest in all such Property to secure payment and performance of the Secured Obligations. This Deed of Trust constitutes a security agreement under the California Uniform Commercial Code, as amended or recodified from time to time (the "UCC"), covering all such Property. To the extent such Property is not real property encumbered by the lien granted above, and is not absolutely assigned by the assignment set forth above, it is the intention of the parties that such Property shall constitute "proceeds, products, offspring, rents, or profits" (as defined in and for the purposes of Section 552(b) of the United States Bankruptcy Code, as such section may be modified or supplemented) of the Land and Improvements.

5. Financing Statements. Pursuant to the UCC, Trustor, as debtor, hereby authorizes Beneficiary, as secured party, to file such financing statements and amendments thereof and such continuation statements with respect thereto as Beneficiary may deem appropriate to perfect and preserve Beneficiary's security interest in the Property and Rents, without requiring any signature or further authorization by Trustor. If requested by Beneficiary, Trustor shall pay all fees and costs that Beneficiary may incur in filing such documents in public offices and in obtaining such record searches as Beneficiary may reasonably require. If any financing statement or other document is filed in the records normally pertaining to personal property, that filing shall not be construed as in any way derogating from or impairing this Deed of Trust or the rights or obligations of the parties under it.

Everything used in connection with the Property and/or adapted for use therein and/or which is described or reflected in this Deed of Trust is, and at all times and for all purposes and in all proceedings both legal or equitable shall be regarded as part of the estate encumbered by this Deed of Trust irrespective of whether (i) any such item is physically attached to the Improvements, (ii) serial numbers are used for the better identification of certain equipment items capable of being thus identified in a recital contained herein or in any list filed with Beneficiary, or (iii) any such item is referred to or reflected in any such financing statement so filed at any time. Similarly, the mention in any such financing statement of (1) rights in or to the proceeds of any fire and/or hazard insurance policy, or (2) any award in eminent domain proceedings for a taking or for lessening of value, or (3) Trustor's interest as lessor in any present or future lease or rights to income growing out of the use and/or occupancy of the property conveyed hereby, whether pursuant to lease or otherwise, shall not be construed as in any way altering any of the rights of Beneficiary as determined by this instrument or impugning the priority of Beneficiary's lien granted hereby or by any other recorded document. Such mention in any financing statement is declared to be solely for the protection of Beneficiary in the event any court or judge shall at any time hold, with respect to the matters set forth in the foregoing clauses (1), (2), and (3), that notice of Beneficiary's priority of interest is required in order to be effective against a particular class of persons, including but not limited to the federal government and any subdivisions or entity of the federal government.

6. Fixture Filing. This Deed of Trust is intended to be and constitutes a fixture filing pursuant to the provisions of the UCC with respect to all of the Property constituting fixtures, is being recorded as a fixture financing statement and filing under the UCC, and covers property, goods and equipment which are or are to become fixtures related to the Land and the Improvements. Trustor covenants and agrees that this Deed of Trust is to be filed in the real estate records of Santa Clara County and shall also operate from the date of such filing as a fixture filing in accordance with Section 9502 and other applicable provisions of the

UCC. This Deed of Trust shall also be effective as a financing statement covering minerals or the like (including oil and gas) and accounts subject to the UCC, as amended. Trustor shall be deemed to be the "debtor" and Beneficiary shall be deemed to be the "secured party" for all purposes under the UCC.

7. Trustor's Representations, Warranties and Covenants; Rights and Duties of the Parties.

7.1 Representations and Warranties. Trustor represents and warrants that: (i) Trustor lawfully possesses and holds fee simple interest in the Land and the Improvements, (ii) Trustor has good and marketable title to all of the Property; (iii) Trustor has the full and unlimited power, right and authority to encumber the Property and assign the Rents; (iv) subject only to encumbrances of record and senior liens permitted pursuant to the Grant Documents or otherwise approved in writing by Beneficiary ("**Permitted Encumbrances**"), this Deed of Trust creates a valid first lien on Trustor's entire interest in the Property; (v) except with respect to Permitted Encumbrances, Trustor owns the Property free and clear of all deeds of trust, mortgages, security agreements, reservations of title or conditional sales contracts, (vi) there is no financing statement affecting the Property on file in any public office other than as disclosed in writing to Beneficiary; and (vii) Trustor's correct current address is specified in Section 10.2.

Trustor further represents and warrants that this Deed of Trust and all other documents delivered or to be delivered by Trustor in connection herewith: (a) have been duly authorized, executed, and delivered by Trustor; (b) are binding obligations of Trustor; and (c) do not violate the provisions of any agreement to which Trustor is a party or which affects the Property. Trustor further represents and warrants that there are no pending, or to Trustor's knowledge, threatened actions or proceedings before any court or administrative agency which may adversely affect Trustor's ownership of the Property.

7.2 Performance of Secured Obligations. Trustor shall perform all obligations of Trustor pursuant to the Grant Agreement and in accordance with the respective terms thereof.

7.3 Use of Grant Proceeds; Preservation and Maintenance of Property; Compliance with Laws. Trustor covenants that it shall use the Grant Proceeds solely for purpose of financing the Project in accordance with the Grant Documents. Trustor shall keep the Land and Improvements in good repair and condition, and from time to time shall make necessary repairs, renewals and replacements thereto so that the Property shall be preserved and maintained. Trustor covenants to comply with all federal, state and local laws, regulations, ordinances and rules applicable to the Property and the Project, including without limitation all applicable requirements of state and local building codes and regulations, Prevailing Wage Laws, and all applicable statutes and regulations relating to accessibility for the disabled. Trustor shall not remove, demolish or materially alter any Improvement without Beneficiary's consent, shall complete or restore promptly and in good and workmanlike manner any building, fixture or other improvement which may be constructed, damaged, or destroyed thereon, and shall pay when due all claims for labor performed and materials furnished therefor. Trustor shall use the Land and Improvements solely for purposes authorized by the Grant Documents, shall not commit or allow waste of the Property, and shall not commit or allow any act upon or use of the Property which would violate any applicable law or order of any governmental authority, nor shall Trustor bring on or keep any article on the Property or cause or allow any condition to exist thereon which could invalidate or which would be prohibited by any insurance coverage required to be maintained on the Property pursuant to the Regulatory Agreement.

7.4 Restrictions on Conveyance and Encumbrance; Acceleration. It shall be an Event of Default hereunder if any Transfer (as defined in the Grant Agreement) of the Property, any part thereof, or

interest therein occurs in violation of the requirements of the Grant Documents. If any such Transfer shall occur in violation of such requirements, without limiting the provisions of Section 8 hereof, all obligations secured by this Deed of Trust, irrespective of the maturity dates of such obligations, shall at the option of Beneficiary, and without demand, immediately become due and payable, subject to any applicable cure period.

7.5 Inspections; Books and Records. Beneficiary and its agents and representatives shall have the right at any reasonable time upon reasonable notice to enter upon the Land and inspect the Property to ensure compliance with the Regulatory Agreement. Trustor shall maintain complete and accurate books of account and other records (including copies of supporting bills and invoices) adequate to document the use of the Grant Proceeds and the operation of the Property, together with copies of all written contracts, Leases and other instruments which affect the Property. The books, records, contracts, Leases and other instruments shall be subject to examination and inspection at any reasonable time by Beneficiary following two business days prior notice.

7.6 Charges, Liens, Taxes and Assessments. Trustor shall pay before delinquency all taxes, levies, assessments and other charges affecting the Property that are (or if not paid may become) a lien on all or part of the Property. Trustor may, at Trustor's expense, contest the validity or application of any tax, levy, assessment or charge affecting the Property by appropriate legal proceedings promptly initiated and conducted in good faith and with due diligence, provided that (i) Beneficiary is reasonably satisfied that neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, or lost as a result of such contest, and (ii) Trustor shall have posted a bond or furnished other security as may reasonably be required from time to time by Beneficiary; and provided further that Trustor shall timely make any payment necessary to prevent a lien foreclosure, sale, forfeiture or loss of the Property.

Trustor shall immediately discharge or cause to be discharged any lien on the Property (other than encumbrances approved by Beneficiary as of the date hereof in writing). Trustor shall pay when due each obligation secured by or reducible to a lien, charge or encumbrance which now does or later may encumber or appear to encumber all or part of the Property or any interest in it, whether or not such lien, charge or encumbrance is or would be senior or subordinate to this Deed of Trust. Trustor shall not be required to pay any tax, levy, charge or assessment so long as its validity is being actively contested in good faith and by appropriate actions and/or proceedings.

7.7 Subrogation. Beneficiary shall be subrogated to the liens of all encumbrances, whether released of record or not, which are discharged in whole or in part by Beneficiary in accordance with this Deed of Trust.

7.8 Hazard, Liability and Workers' Compensation Insurance. At all times during the term hereof, Trustor shall at Trustor's expense, maintain insurance policies in accordance with the requirements set forth in the Grant Documents. Trustor shall file with Beneficiary prior to the commencement of the term hereof, certificates (or such other proof as Beneficiary may reasonably require, (including without limitation copies of the required insurance policies) evidencing each of the insurance policies and endorsements thereto as required pursuant to the Grant Documents, and such certificates (or policies) shall provide that at least thirty (30) days' prior written notice shall be provided to Beneficiary prior to the expiration, cancellation or change in coverage under each such policy. If any insurance policy required pursuant to the Grant Documents is canceled or the coverage provided thereunder is reduced, Trustor shall, within ten (10) days after receipt of written notice of such cancellation or reduction in coverage, but in no event later than the

effective date of cancellation or reduction, file with Beneficiary a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon failure to so file such certificate, Beneficiary may, without further notice and at its option, procure such insurance coverage at Trustor's expense, and Trustor shall promptly reimburse Beneficiary for such expense upon receipt of billing from Beneficiary.

7.9 Hazardous Materials. Trustor shall not cause or permit any Hazardous Material (as defined in Section 5.13.1 of the Grant Agreement) to be brought upon, kept, stored or used in, on, under, or about the Land by Trustor, its agents, employees, contractors or invitees except for incidental supplies ordinarily used in the construction and operation of the Project in compliance with all applicable laws, and shall not cause any release of Hazardous Materials into, onto, under or through the Land. If any Hazardous Material is discharged, released, dumped, or spilled in, on, under, or about the Land and results in any contamination of the Land or adjacent property, or otherwise results in the release or discharge of Hazardous Materials in, on, under or from the Land, Trustor shall promptly take all actions at its sole expense as are necessary to comply with all Environmental Laws (as defined below).

Trustor shall indemnify, defend (with counsel reasonably acceptable to Beneficiary), and hold Beneficiary and its elected and appointed officials, officers, agents and employees (collectively, "**Indemnitees**") harmless from and against any and all loss, claim, liability, damage, demand, judgment, order, penalty, fine, injunctive or other relief, cost, expense (including reasonable fees and expenses of attorneys, expert witnesses, and other professionals advising or assisting Beneficiary), action, or cause of action (all of the foregoing, hereafter individually "**Claim**" and collectively "**Claims**") arising in connection with the breach of Trustor's covenants and obligations set forth in this Section 7.9 or otherwise arising in connection with the presence or release of Hazardous Materials in, on, under, or from the Property. The foregoing indemnity includes, without limitation, all costs of investigation, assessment, containment, removal, remediation of any kind, and disposal of Hazardous Materials, all costs of determining whether the Land is in compliance with Environmental Laws, all costs associated with bringing the Land into compliance with all applicable Environmental Laws, and all costs associated with claims for damages or injury to persons, property, or natural resources.

Without limiting the generality of the foregoing, Trustor shall, at Trustor's own cost and expense, do all of the following:

(i) pay or satisfy any judgment or decree that may be entered against any Indemnitee or Indemnitees in any legal or administrative proceeding incident to any matters against which Indemnitees are entitled to be indemnified under this Deed of Trust;

(ii) reimburse Indemnitees for any expenses paid or incurred in connection with any matters against which Indemnitees are entitled to be indemnified under this Deed of Trust; and

(iii) reimburse Indemnitees for any and all expenses, including without limitation out-of-pocket expenses and fees of attorneys and expert witnesses, paid or incurred in connection with the enforcement by Indemnitees of their rights under this Deed of Trust, or in monitoring and participating in any legal or administrative proceeding.

Trustor's obligation to indemnify the Indemnitees shall not be limited or impaired by any of the following, or by any failure of Trustor to receive notice of or consideration for any of the following: (i) any

amendment or modification of the Grant Agreement; (ii) any extensions of time for performance required by the Grant Documents; (iii) any provision of the Grant Agreement limiting Beneficiary's recourse to property securing the Secured Obligations, or limiting the personal liability of Trustor, or any other party for payment of all or any part of the Secured Obligations; (iv) the accuracy or inaccuracy of any representation and warranty made by Trustor under this Deed of Trust or by Trustor or any other party under any documents, (v) the release of Trustor or any other person, by Beneficiary or by operation of law, from performance of any obligation under the Grant Documents; (vi) the release or substitution in whole or in part of any security for the Secured Obligations; and (vii) Beneficiary's failure to properly perfect any lien or security interest given as security for the Secured Obligations.

The provisions of this Section 7.9 shall be in addition to any and all other obligations and liabilities that Trustor may have under applicable law, and each Indemnitee shall be entitled to indemnification under this Section without regard to whether Beneficiary or that Indemnitee has exercised any rights against the Property or any other security, pursued any rights against any guarantor or other party, or pursued any other rights available under the Regulatory Agreement or applicable law. The obligations of Trustor to indemnify the Indemnitees under this Section shall survive any repayment or discharge of the Secured Obligations, any foreclosure proceeding, any foreclosure sale, any delivery of any deed in lieu of foreclosure, and any release of record of the lien of this Deed of Trust.

Without limiting any of the remedies provided in this Deed of Trust, Trustor acknowledges and agrees that each of the provisions in this Section 7.9 is an environmental provision (as defined in Section 736(f)(2) of the California Code of Civil Procedure) made by Trustor relating to real property security (the "**Environmental Provisions**"), and that Trustor's failure to comply with any of the Environmental Provisions will be a breach of contract that will entitle Beneficiary to pursue the remedies provided by Section 736 of the California Code of Civil Procedure ("**Section 736**") for the recovery of damages and for the enforcement of the Environmental Provisions. Pursuant to Section 736, Beneficiary's action for recovery of damages or enforcement of the Environmental Provisions shall not constitute an action within the meaning of Section 726(a) of the California Code of Civil Procedure or constitute a money judgment for a deficiency or a deficiency judgment within the meaning of Sections 580a, 580b, 580d, or 726(b) of the California Code of Civil Procedure.

"**Environmental Law**" means all federal, state or local statutes, ordinances, rules, regulations, orders, decrees, judgments or common law doctrines, and provisions and conditions of permits, licenses and other operating authorizations regulating, or relating to, or imposing liability or standards of conduct concerning (i) pollution or protection of the environment, including natural resources; (ii) exposure of persons, including employees and agents, to any Hazardous Material (as defined above) or other products, raw materials, chemicals or other substances; (iii) protection of the public health or welfare from the effects of by-products, wastes, emissions, discharges or releases of chemical substances from industrial or commercial activities; (iv) the manufacture, use or introduction into commerce of chemical substances, including without limitation, their manufacture, formulation, labeling, distribution, transportation, handling, storage and disposal; or (v) the use, release or disposal of toxic or hazardous substances or Hazardous Materials or the remediation of air, surface waters, groundwaters or soil, as now or may at any later time be in effect, including but not limited to the Toxic Substances Control Act [15 U.S.C. 2601, et seq.]; the Comprehensive Environmental Response, Compensation and Liability Act [42 U.S.C. Section 9601, et seq.], the Hazardous Materials Transportation Authorization Act [49 U.S.C. Section 5101, et seq.], the Resource Conservation and Recovery Act [42 U.S.C. 6901, et seq.], the Federal Water Pollution Control Act [33 U.S.C. Section 1251], the Clean Air Act [42 U.S.C. Section 7401, et seq.], the California



Underground Storage of Hazardous Substances Act [California Health and Safety Code Section 25280, et seq.], the California Hazardous Substances Account Act [California Health and Safety Code Section 25300, et seq.], the California Hazardous Waste Act [California Health and Safety Code Section 25100, et seq.], the California Safe Drinking Water and Toxic Enforcement Act [California Health and Safety Code Section 25249.5, et seq.], and the Porter-Cologne Water Quality Control Act [California Water Code Section 13000, et seq.], as they now exist or are hereafter amended, together with any regulations promulgated thereunder.

7.10 Notice of Claims; Defense of Security; Reimbursement of Costs.

(a) Notice of Claims. Trustor shall provide written notice to Beneficiary of any uninsured or partially uninsured loss affecting the Property through fire, theft, liability, or property damage in excess of an aggregate of Fifty Thousand Dollars (\$50,000) within three business days of the occurrence of such loss. Trustor shall ensure that Beneficiary shall receive timely notice of, and shall have a right to cure, any default under any other financing document or other lien affecting the Property and shall use best efforts to ensure that provisions mandating such notice and allowing such right to cure shall be included in all such documents. Within three business days of Trustor's receipt thereof, Trustor shall provide Beneficiary with a copy of any notice of default Trustor receives in connection with any financing document secured by the Property or any part thereof.

(b) Defense of Security. At Trustor's sole expense, Trustor shall protect, preserve and defend the Property and title to and right of possession of the Property, the security of this Deed of Trust and the rights and powers of Beneficiary and Trustee created under it, against all adverse claims.

(c) Compensation; Reimbursement of Costs. Trustor agrees to pay all reasonable fees, costs and expenses charged by Beneficiary or Trustee for any service that Beneficiary or Trustee may render in connection with this Deed of Trust, including without limitation, fees and expenses related to provision of a statement of obligations or related to a reconveyance. Trustor further agrees to pay or reimburse Beneficiary for all costs, expenses and other advances which may be incurred or made by Beneficiary or Trustee in any efforts to enforce any terms of this Deed of Trust, including without limitation any rights or remedies afforded to Beneficiary or Trustee or both of them under Sections 7.15 and 8.2, whether or not any lawsuit is filed, or in defending any action or proceeding arising under or relating to this Deed of Trust, including reasonable attorneys' fees and other legal costs, costs of any disposition of the Property under the power of sale granted hereunder or any judicial foreclosure, and any cost of evidence of title.

(d) Notice of Changes. Trustor shall give Beneficiary prior written notice of any change in the address of Trustor and the location of any Property, including books and records pertaining to the Property.

7.11 Indemnification.

(a) Trustor shall indemnify, defend (with counsel reasonably acceptable to Beneficiary), and hold harmless the Trustee and the Indemnitees (as defined in Section 7.9) from and against all Claims arising directly or indirectly in any manner in connection with or as a result of (a) any breach of Trustor's covenants under any Agency Document, (b) any representation by Trustor in any Agency Document which proves to be false or misleading in any material respect when made, (c) injury or death to persons or damage to property or other loss occurring on the Land or in any improvement located thereon, whether caused by the negligence or any other act or omission of Trustor or any other person or by negligent, faulty,

inadequate or defective design, building, construction or maintenance or any other condition or otherwise, (d) any claim, demand or cause of action, or any action or other proceeding, whether meritorious or not, brought or asserted against any Indemnitee which relates to or arises out of the Property, or any Agency Document or any transaction contemplated thereby, or any failure of Trustor to comply with all applicable state, federal and local laws and regulations applicable to the Property, provided that no Indemnitee shall be entitled to indemnification under this Section for matters caused by such Indemnitee's gross negligence or willful misconduct. The obligations of Trustor under this Section shall be secured by this Deed of Trust. Notwithstanding any contrary provision contained herein, the obligations of Trustor under this Section shall survive any foreclosure proceeding, any foreclosure sale, any delivery of a deed in lieu of foreclosure, and any release or reconveyance of this Deed of Trust.

(b) Limitation of Liability. Beneficiary shall not be directly or indirectly liable to Trustor or any other person as a consequence of any of the following: (i) Beneficiary's exercise of or failure to exercise any rights, remedies or powers granted to Beneficiary in this Deed of Trust; (ii) Beneficiary's failure or refusal to perform or discharge any obligation or liability of Trustor under any agreement related to the Property or under this Deed of Trust; (iii) any waste committed by Trustor, the lessees of the Property or any third parties, or any dangerous or defective condition of the Property; or (iv) any loss sustained by Trustor or any third party resulting from any act or omission of Beneficiary in managing the Property after an Event of Default, unless the loss is caused by the willful misconduct, gross negligence, or bad faith of Beneficiary. Trustor hereby expressly waives and releases all liability of the types described in this Section 7.11(b), and agrees that Trustor shall assert no claim related to any of the foregoing against Beneficiary.

7.12 Insurance and Condemnation Proceeds. Subject to the rights of any senior lienholders, any award of damages in connection with any condemnation for public use of, or injury to the Property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply such moneys to any payments due to Beneficiary from Trustor arising out of the Grant Agreement, the Regulatory Agreement or this Deed of Trust secured hereby in such order as Beneficiary may determine, or at the option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

7.13 Release, Extension, Modification. At any time and from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed of Trust for endorsement, Trustee may release or reconvey all or any part of the Property, consent to the making of any map or plat of the Land or part thereof, join in granting any easement or creating any restriction affecting the Property, or join in any extension agreement or other agreement affecting the lien or charge hereof. At any time and from time to time, without liability therefor and without notice, Beneficiary may (i) release any person responsible for performance of any Secured Obligation, (ii) extend the time for performance or otherwise alter the terms of performance of any Secured Obligation; (iii) accept additional real or personal property of any kind as security for any Secured Obligation, or (iv) substitute or release any property securing the Secured Obligations.

7.14 Reconveyance. Upon written request of Beneficiary stating that all of the Secured Obligations have been performed in full, and upon surrender of this Deed of Trust, Trustee shall reconvey, without warranty, the Property or so much of it as is then held under this Deed of Trust. The recitals in any reconveyance executed under this Deed of Trust of any matters or facts shall be conclusive proof of the

truthfulness thereof. Trustor shall pay all fees of Trustee and all recordation fees related to such reconveyance.

7.15 Cure; Protection of Security. Either Beneficiary or Trustee may cure any breach or default of Trustor, and if it chooses to do so in connection with any such cure, Beneficiary or Trustee may also enter the Property and/or do any and all other things which it may in its sole discretion consider necessary and appropriate to protect the security of this Deed of Trust. Such other things may include: appearing in and/or defending any action or proceeding which purports to affect the security of, or the rights or powers of Beneficiary or Trustee under, this Deed of Trust; paying, purchasing, contesting or compromising any encumbrance, charge, lien or claim of lien which in Beneficiary's or Trustee's sole judgment is or may be senior in priority to this Deed of Trust, such judgment of Beneficiary or Trustee to be conclusive as among Beneficiary, Trustee and Trustor; obtaining insurance and/or paying any premiums or charges for insurance required to be carried hereunder; otherwise caring for and protecting any and all of the Property; and/or employing counsel, accountants, contractors and other appropriate persons to assist Beneficiary or Trustee. Beneficiary and Trustee may take any of the actions permitted under this Section 7.15 either with or without giving notice, except for notices required under applicable law. Any amounts disbursed by Beneficiary pursuant to this paragraph shall become additional indebtedness secured by this Deed of Trust.

## 8. Default and Remedies

8.1 Events of Default. Trustor acknowledges and agrees that an Event of Default shall occur under this Deed of Trust upon the occurrence of any one or more of the following events:

- (i) Beneficiary's declaration of an Event of Default under the Grant Agreement or the Regulatory Agreement, subject to the expiration of any applicable cure period set forth in such document;
- (ii) Trustor fails to perform any monetary obligation which arises under this Deed of Trust, and does not cure that failure within ten (10) days following written notice from Beneficiary or Trustee;
- (iii) If Trustor's interest in the Property or any part thereof is voluntarily or involuntarily sold, transferred, leased, encumbered, or otherwise conveyed in violation of Section 7.4 hereof or if any other Transfer occurs in violation of the Grant Agreement;
- (iv) Trustor fails to maintain the insurance coverage required under the Regulatory Agreement or otherwise fails to comply with the requirements of Section 7.8 hereof and Trustor fails to cure such default within the time specified in Section 7.8;
- (v) Subject to Trustor's right to contest such charges as provided herein, Trustor fails to pay taxes or assessments due on the Land or the Improvements or fails to pay any other charge that may result in a lien on the Land or the Improvements, and Trustor fails to cure such default within 10 days.
- (vi) Any representation or warranty of Trustor contained in or made in connection with the execution and delivery of this Deed of Trust or in any certificate or statement furnished pursuant hereto or in any other Agency Document proves to have been false or misleading in any material adverse respect when made;

(vii) If, pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors ("**Bankruptcy Law**"), Trustor (i) commences a voluntary case or proceeding; (ii) consents to the entry of an order for relief against Trustor in an involuntary case; (iii) consents to the appointment of a trustee, receiver, assignee, liquidator or similar official for Trustor; (iv) makes an assignment for the benefit of its creditors; or (v) admits in writing its inability to pay its debts as they become due.

(viii) If a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that (i) is for relief against Trustor in an involuntary case, (ii) appoints a trustee, receiver, assignee, liquidator or similar official for Trustor or substantially all of Trustor's assets, or (iii) issues or levies a judgment, writ, warrant of attachment or similar process against the Property or the Project, and in each case the order or decree is not released, vacated, dismissed or fully bonded within 60 days after its issuance.

(ix) The holder of any other debt instrument secured by a mortgage or deed of trust on the Property or part thereof declares an event of default thereunder and exercises a right to declare all amounts due under that debt instrument immediately due and payable, subject to the expiration of any applicable cure period set forth in such holder's documents; or

(x) Trustor fails to perform any obligation arising under this Deed of Trust other than one enumerated in this Section 8.1, and does not cure that failure either within ten (10) days after written notice from Beneficiary or Trustee in the event of a monetary default, or within thirty (30) days after such written notice in the event of a nonmonetary default, provided that in the case of a nonmonetary default that in Beneficiary's reasonable judgment cannot reasonably be cured within thirty (30) days, an Event of Default shall not arise hereunder if Trustor commences to cure such default within thirty (30) days and thereafter prosecutes such cure to completion with due diligence and in good faith and in no event later than 120 days following receipt of notice of default.

8.2 Remedies. Subject to the applicable notice and cure provisions set forth herein, at any time after an Event of Default, Beneficiary and Trustee shall be entitled to invoke any and all of the rights and remedies described below, and may exercise any one or more or all, of the remedies set forth in the Grant Documents, and any other remedy existing at law or in equity. All of Beneficiary's rights and remedies shall be cumulative, and the exercise of any one or more of them shall not constitute an election of remedies. Beneficiary shall be entitled to collect all expenses incurred in pursuing the remedies provided hereunder, including without limitation reasonable attorneys' fees and costs.

(a) Receiver. Beneficiary may apply to any court of competent jurisdiction for, and obtain appointment of, a receiver for the Property.

(b) Entry. Beneficiary, in person, by agent or by court-appointed receiver, may enter, take possession of, manage and operate all or any part of the Property, and may also do any and all other things in connection with those actions that Beneficiary may in its sole discretion consider necessary and appropriate to protect the security of this Deed of Trust. Such other things may include: taking and possessing copies of all of Trustor's or the then owner's books and records concerning the Property; entering into, enforcing, modifying, or canceling Leases on such terms and conditions as Beneficiary may consider proper; evicting tenants; fixing or modifying Rents; collecting and receiving any payment of money owing to Trustor; completing any unfinished construction; and/or contracting for and making repairs and

alterations. If Beneficiary so requests, Trustor shall assemble all of the Property that has been removed from the Land and make all of it available to Beneficiary at the site of the Land. Trustor hereby irrevocably constitutes and appoints Beneficiary as Trustor's attorney-in-fact to perform such acts and execute such documents as Beneficiary in its sole discretion may consider to be appropriate in connection with taking these measures, including endorsement of Trustor's name on any instruments.

(c) UCC Remedies. Beneficiary may exercise any or all of the remedies granted to a secured party under the UCC.

(d) Judicial Action. Beneficiary may bring an action in any court of competent jurisdiction to foreclose this Deed of Trust in the manner provided by law for foreclosure of mortgages on real property and/or to obtain specific enforcement of any of the covenants or agreements of this Deed of Trust.

(e) Power of Sale. Under the power of sale hereby granted, Beneficiary shall have the discretionary right to cause some or all of the Property, including any Property which constitutes personal property, to be sold or otherwise disposed of in any combination and in any manner permitted by applicable law.

8.3 Power of Sale. If Beneficiary elects to invoke the power of sale hereby granted, Beneficiary shall execute or cause the Trustee to execute a written notice of such default and of its election to cause the Property to be sold to satisfy the obligations hereof, and shall cause such notice to be recorded in the office of the Recorder of each County wherein the Property or some part thereof is situated as required by law and this Deed of Trust.

Prior to publication of the notice of sale, Beneficiary shall deliver to Trustee this Deed of Trust and the Note or other evidence of indebtedness which is secured hereby, together with a written request for the Trustee to proceed with a sale of the Property, pursuant to the provisions of law and this Deed of Trust.

Notice of sale having been given as then required by law, and not less than the time then required by law having elapsed after recordation of such notice of default, Trustee, without demand on Trustor, shall sell the Property at the time and place fixed by it in the notice of sale, either as a whole or in separate parcels and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may, and at Beneficiary's request shall, postpone sale of all or any portion of the Property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time and place fixed by the preceding postponement. Trustee shall deliver to the purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary, may purchase at such sale.

After deducting all costs, fees, and expenses of Trustee and of the trust hereby created, including reasonable attorneys' fees in connection with sale, Trustee shall apply the proceeds of sale to payment of all sums advanced or expended by Beneficiary or Trustee under the terms hereof and all outstanding sums then secured hereby, and the remainder, if any, to the person or persons legally entitled thereto.

At any foreclosure sale, any person, including Trustor, Trustee or Beneficiary, may bid for and acquire the Property or any part of it to the extent permitted by then applicable law. Instead of paying cash for such property, Beneficiary may settle for the purchase price by crediting the sales price of the property against the following obligations:

(a) First, the portion of the Secured Obligations attributable to the expenses of sale, costs of any action and any other sums for which Trustor is obligated to pay or reimburse Beneficiary or Trustee under Section 7.10(c); and

(b) Second, the remaining balance of all other Secured Obligations in any order and proportions as Beneficiary in its sole discretion may choose.

9. Trustor's Waivers. To the fullest extent permitted by law, Trustor waives: (a) all statutes of limitations as a defense to any action or proceeding brought against Trustor by Beneficiary; (b) the benefit of all laws now existing or which may hereafter be enacted providing for any appraisal, valuation, stay, extension, redemption or moratorium; (c) all rights of marshalling in the event of foreclosure; and (d) all presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, notices of acceptance of this Deed of Trust and of the existence, creation, or incurring of new or additional indebtedness, and demands and notices of every kind.

#### 10. Miscellaneous Provisions

10.1 Additional Provisions. The Regulatory Agreement grants further rights to Beneficiary and contain further agreements and affirmative and negative covenants by Trustor which apply to this Deed of Trust and the Property.

10.2 Notices. Trustor requests that a copy of notice of default and notice of sale be mailed to Trustor at the address set forth below. That address is also the mailing address of Trustor as debtor under the UCC. Beneficiary's address set forth below is the address for Beneficiary as secured party under the UCC. Except for any notice required under applicable law to be given in another manner, all notices to be sent pursuant to this Deed of Trust shall be made in writing, and sent to the parties at their respective addresses specified below or to such other address as a party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by:

(a) personal delivery, in which case notice shall be deemed delivered upon receipt;

(b) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered two (2) business days after deposit, postage prepaid in the United States mail;

(c) nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) day after deposit with such courier; or

(d) facsimile transmission, in which case notice shall be deemed delivered on transmittal, provided that a transmission report is generated reflecting the accurate transmission thereof.

**Beneficiary:** Redevelopment Agency of the City of Milpitas  
455 East Calaveras  
Milpitas, CA 95035  
Attention: Executive Director

**Trustor:** Senior Housing Solutions  
512 Valley Way  
Milpitas, CA 95035  
Attention: Bob Campbell

**Trustee:** Financial Title Company  
1247 So. Park Victoria Drive  
Milpitas, CA 95035  
Attention: Maria Salcedo

10.3 Binding on Successors. The terms, covenants and conditions of this Deed of Trust shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, transferees, and assigns of the Trustor, Beneficiary and Trustee; provided however this Section 10.3 does not waive the provisions of Section 7.4.

10.4 Substitution of Trustee. Beneficiary may from time to time or at any time substitute a trustee or trustees to execute the trust hereby created, and when any such substitution has been filed for record in the office of the Recorder of Santa Clara County, it shall be conclusive evidence of the appointment of such trustee or trustees, and such new trustee or trustees shall succeed to all of the powers and duties of the Trustee named herein.

10.5 Attorneys' Fees and Costs. In any action or proceeding to foreclose this Deed of Trust or to enforce any right of Beneficiary or of Trustee, Trustor shall pay to Beneficiary and Trustee all costs of such action or proceeding, including reasonable attorneys' fees.

10.6 Governing Law; Severability; Interpretation. This Deed of Trust shall be governed by the laws of the State of California without regard to principles of conflicts of laws. Trustor agrees that any controversy arising under or in relation to this Deed of Trust shall be litigated exclusively in the jurisdiction where the Land is located (the "**Property Jurisdiction**"). The state and federal courts and authorities with jurisdiction in the Property Jurisdiction shall have exclusive jurisdiction over all controversies which shall arise under or in relation to the Regulatory Agreement. Trustor irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation, and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise. If any provision of this Deed of Trust is held unenforceable or void, that provision shall be deemed severable from the remaining provisions, and shall in no way affect the validity of this Deed of Trust. The captions used in this Deed of Trust are for convenience only and are not intended to affect the interpretation or construction of the provisions herein contained. In this Deed of Trust, whenever the context so requires, the singular number includes the plural.

10.7 Waiver, Modification and Amendment. Any waiver by Beneficiary of any obligation of Trustor hereunder must be in writing, and no waiver shall be construed as a continuing waiver. No waiver

shall be implied from any delay or failure by Beneficiary or Trustee to take action on account of any default of Trustor. Consent by Beneficiary or Trustee to any act or omission by Trustor shall not be construed as a consent to any other or subsequent act or omission or to waive the requirement for Beneficiary's or Trustee's consent to be obtained in any future or other instance. No amendment to or modification of this Deed of Trust shall be effective unless and until such amendment or modification is in writing, executed by Trustor and Beneficiary. Without limiting the generality of the foregoing, Beneficiary's acceptance of payment of any sum secured hereby after its due date shall not constitute a waiver by Beneficiary of its right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

10.8 Action By Beneficiary. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, or consent by the Beneficiary is required or permitted under this Agreement, such action shall be in writing, and such action may be given, made or taken by Beneficiary's Executive Director or by any person who shall have been designated by Beneficiary's Executive Director, without further approval by the governing board of Beneficiary. Beneficiary shall use reasonable best efforts to respond to requests for any such approval, notice, direction, or consent in a timely manner. In any approval, consent, or other determination by Beneficiary required hereunder, Beneficiary shall act reasonably and in good faith.

10.9 Joint and Several Liability. If Trustor consists of more than one person or entity, each shall be jointly and severally liable for the faithful performance of all of Trustor's obligations under this Deed of Trust.

10.19 Time is of the Essence. Time is of the essence for each provision of this Deed of Trust.

**IN WITNESS WHEREOF,** Trustor has executed this Deed of Trust as of the date first written above.

**SENIOR HOUSING SOLUTIONS,  
a California public benefit corporation**

By: \_\_\_\_\_  
Bob Campbell  
Executive Director

**SIGNATURES MUST BE NOTARIZED.**



Exhibit A

**LAND**

(Attach legal description.)

ACKNOWLEDGMENT

State of California       )  
                                      ) ss.  
County of Santa Clara    )

On \_\_\_\_\_ before me, a Notary Public, personally appeared \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(is), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed-ed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
NOTARY PUBLIC